BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BM/JR/2022-23/ 23296 - 23297

UNDER SECTION15-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:

S. No.	Name	PAN Number
1.	**Swiss Glasscoat Equipment Ltd. (now known as HLE Glascoat Ltd.)**	**AACCS6297G**
2.	**Link Intime India Pvt. Ltd.**	**AAACI4998N**

In the matter of complaint by Pushpaben Rasiklal Patel

Facts of the Case:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) received a complaint from Ms. Pushpaben Rasikbhai Patel on August 12, 2021 regarding fraudulent transfer of shares and duplicate issuance of shares to the person who is not a real owner of the equity shares of Swiss Glasscoat Equipment Limited (name changed to HLE Glascoat Limited) (hereinafter referred to as "**Company**"/ "**Noticee 1**").

2. The complainant has in her captioned complaint, *inter alia,* stated that 300 equity shares had fraudulently been transferred to someone else and now Company and Link Intime India Pvt. Ltd. (hereinafter referred to as "**Noticee 2**") (collectively known as the "**Noticees**") are not investigating in the matter and giving same reply again and again with irrelevant documentary proof which does not belong to true real shareholder. In view of the same, adjudication proceedings is initiated in respect of Noticee 1 for alleged violation of Instructions to Registrars To An Issue /Share Transfer Agents dated October 11, 1994 and non-compliance with clause 23 SEBI of Circular dated May 9, 2001 and Noticee 2 for the alleged violation of clause 3 of Code of Conduct under Schedule III of Regulation 13 of SEBI (Registrars to an

Issue and Share Transfer Agents) Regulations, 1993 (hereinafter referred to as "**RTI STA Regulations**") and non-compliance with clause 23 of SEBI Circular dated May 9, 2001.

<u>Appointment of Adjudicating Officer:</u>

3. The undersigned was appointed as the Adjudicating Officer vide communique dated October 12, 2022 (copy of the Order communicating the appointment is enclosed as Annexure 2), under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") read with section 19 of the SEBI Act to enquire into and adjudge under section 15HB of SEBI Act for the alleged violations committed by the Noticees.

<u>Show Cause Notice, Reply and Personal Hearing</u>:

4. Show Cause Notice dated November 11, 2022 (hereinafter referred to as 'SCN') was issued to the Noticees under rule 4(1) of the SEBI AO Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under section 15HB of SEBI Act for the following alleged violations:

i) Clarification dated September 13, 2021 was sought from Noticee 1, vide which Noticee 1 was advised to provide the transfer request along with the documents received from the complainant for the share transfer as alleged by the complainant. Noticee 1 was also advised to provide the documents for duplicate issuance as received from the person to whom the duplicate shares were issued. Vide reply dated October 1, 2021, Noticee 1 provided the documents for duplicate issuance.

ii) Further, clarification dated October 18, 2021 was sought by SEBI from Noticee 1, vide which it was stated that as per the objections raised by the investor, it had been observed that while changing the address details of the shareholder, no cross verification of documents was done to verify the identity of the shareholder. It was also stated that the PAN number of the new applicant did not match with that of the original shareholder and that it appeared that Noticee 1 did not carry out any due diligence while carrying out the process. Vide reply dated October 25, 2021, Noticee 1 provided a clarification dated October 24, 2021, inter alia, stating the following:

- *"Specimen Signature record was not provided to us while handing over master data from earlier RTA (change in appointment of RTA was done in the FY 2015-16, as stated in the Board Meeting outcome dated 08.02.2016), hence we were unable to check the signature.*
- *The application for issue of duplicate share certificate was processed based on Signature Verification Form duly attested by Banker to obtain duplicate certificate.*
- *Further, FIR, Indemnity Bond and affidavit and other documents. Address Verification- As per the master data received from earlier RTA, the address details are as "Behind Bright School, VIP Road Karelibaug, Baroda, VADODARA – 390016"; Correspondences received which indicate that 1st line B-19 Karelibaug Society is not available in records, whereas rest of address details has remained same as per records.*
- *Applicant has submitted Dena Bank's statement and Aadhar Card. Applicant has also mentioned that he has received dividend F.Y. 2015-2016 (declared in FY 2016-17) by DD 950474 at address sent as per records. i.e. Behind Bright School, VIP Road Karelibaug, Baroda, VADODARA – 390016.*
- *PAN Verification – As PAN details was not registered in records, we unable to check the copy of PAN Card as submitted by applicant.*
- *The duplicate certificate was dispatched by registered or speed post EG655159654IN on 05.12.2016 as mentioned on letter. ….Based on the above, we hereby submit that the due care and diligence is observed and has been observed by the Company/ RTA while processing any share related requests."*

iii) The complaint was then sent to Noticee 2, Link Intime India Pvt Ltd. On November 9, 2021. Vide ATR dated December 7, 2021, Noticee 2, inter alia, stated the following:

"At the outset we would like to state that the Company vide their letter dated 24th October, 2021 had intimated SEBI that the specimen signature and the PAN was not registered under the captioned folio, as per the data handed over to us by the former RTA i.e MCS Limited. Further at the time of issuing duplicate share certificate to the registered shareholder, the documents such as Banker Verification attested by Bank, registered notarized Indemnity Bond, registered notarized Affidavit, copy of Police complaint duly acknowledged by Police Station, self-attested copy of PAN, self-attested copy of Aadhar etc were duly obtained from the registered shareholder. With respect to the change of address, we would like to state that the registered shareholder approached Noticee 1 requesting for

the payment of the unpaid dividend and change of address. As per the data received from the former RTA, the registered address under the captioned folio was 'Behind Bright School VIP Road Karelibaug Vadodara' and the registered shareholder requested to update address as – 'B-19 Karelibaug Society behind Bright School VIP Road Karelibaug Vadodara'. Noticee 1 duly intimated the registered shareholder to furnish the following documents: a) An application for the change of address duly mentioning all the details. b) Bank attested supporting documents viz Driving License, Bank Statement of not more than 3 months old etc. c) Self-Attested copy of PAN Accordingly the registered shareholder submitted the application along with Bank Statement of Dena Bank and self-attested copy of PAN. It is pertinent to note that the bank statement of Dena Bank and Aadhar had the registered address as B-19 Karelibaug Society B/H Bright School VIP Road Vadodara 390018. Subsequently the first line of the address was updated in the records. In view of the above, we submit that the Company and the RTA have performed their duties with due care and diligence while processing the requests and thus we graciously pray before this Hon'ble Authority to dismiss the said complaint against the Company and RTA and render justice."

iv) Vide clarification dt. December 22, 2021, the following clarification was, *inter alia*, sought from Noticee 2:

'It is seen from the documents uploaded that the Ms Pushpaben Rajendrabhai Patel had sent a request for payment of dividend and change in address vide letter dt. January 18, 2017, which was received by you on January 24, 2017. Vide letter dt. January 25, 2017, you intimated the complainant that the change of address has been carried out. Vide letter dt. December 5, 2016, it is seen that duplicate share certificates have been issued to Ms. Pushpaben R Patel on the new address (even before the change of address was carried out). You are requested to clarify the same. Further, the Complainant has uploaded in his complaint equity dividend dt. October 1, 2015, from the Company, where in the address of the investor is not limited to Behind Bright School VIP Road Karelibaug Vadodara. The address of Pushpaben Patel stated on the company equity dividend dt. October 1, 2015 is 262 Ainath Society, Behind Bright School VIP Road Karelibaug Baroda. You are advised to clarify how then are you stating that the registered address under the captioned folio was 'Behind Bright School VIP Road Karelibaug Vadodara…..'

v) A meeting dated February 3, 2022 was held with Noticee 1 officials and Noticee 2 with SEBI Officers wherein Noticee 1 and Noticee 2 were asked to clarify the following:

a) The Complainant has uploaded in his complaint an equity dividend warrant dated October 1, 2015, from Noticee 1, where in the address of the investor is not limited to Behind Bright School VIP Road Karelibaug Vadodara. The address of Pushpaben Patel stated on Noticee 1 equity dividend dated October 1, 2015 is 262 Ainath Society, Behind Bright School VIP Road Karelibaug Baroda. However Noticee 1/ Noticee 2 has been stating on SCORES that the registered address under the captioned folio was ‘Behind Bright School VIP Road Karelibaug Vadodara…..’ Notice 1 was asked to clarify how the society name was deleted from Noticee 1’s records?

b) It is seen from the documents uploaded that the Ms Pushpaben Rajendrabhai Patel had sent a request for payment of dividend and change in address vide letter dt. January 18, 2017, which was received by Noticee 2 on January 24, 2017. Vide letter dt. January 25, 2017, Noticee 2 intimated the complainant that the change of address has been carried out. Vide letter dt. December 5, 2016, it is seen that duplicate share certificates have been issued to Ms. Pushpaben R Patel on the new address (even before the change of address was carried out). How were the shares sent to the new address before the Change of Address was processed in Noticee 1/ RTA’s records (since the change of address request was sent by the complainant vide letter dt. January 18, 2017)

vi) However, no satisfactory reply could be provided by Noticee 1 or Noticee 2 to the aforementioned questions sought by SEBI.

vii) It is alleged that there has been negligence on the part of Noticee 1, Swiss Glasscoat Equipments Ltd. as well as Noticee 2, Link Intime India Pvt Ltd. Noticee 2 and Noticee 1, have failed to carry out proper due diligence and have issued duplicate shares to a person who is not the original shareholder. The equity dividend warrant dated October 1, 2015, sent by Noticee 1 to the original shareholder clearly stated the address as ‘262 Ainath Society, Behind Bright School VIP Road Karelibaug Baroda.’ However, Noticee 1/Noticee 2, have in their replies to SEBI stated that the address as per their records of the original shareholder was ‘Behind Bright School VIP Road Karelibaug Vadodara.’

viii) Draft of Agreement between Noticee 2 and the Issuer Company, provided in SEBI Instructions to Registrars to an Issue/ Share Transfer Agents dated October 11, 1994, is as follows (Annexure 8):

(19) It is the company which is primarily responsible for Registrars’ work and Registrar shall act with the due diligence, care and skill while discharging the work assigned to it by the company. However, the Registrar shall indemnify the company and its successors from and against all suits, claims, actions and demand which may be made or commenced against the company by any holder of the securities issued or other third party as a consequence of any failure or deficiency on the part of the Registrar in performing or fulfilling, providing any of its functions, duties, obligations and services hereunder, however, the Registrar shall not be liable for any indirect or consequential loss caused to the company due to error or omission committed by them in good faith.

From the above, it is alleged that Noticee 1 is primarily responsible for Registrars' work.

ix) Clarification regarding the above, whether all the Stock Exchanges where the shares of the said Company were traded were informed about the loss of shares in lieu of which duplicate shares were being issued and whether an advertisement in a widely circulated newspaper was issued before the duplicate shares were issued along with documentary evidence regarding the same, was sought from Noticee 2 on Feb 23, 2022. Further, a reminder was sent to Noticee 2 on March 2, 2022, to provide a reply to the clarification sought on Feb 23, 2022 at the earliest. Vide ATR dated March 4, 2022, Noticee 2 provided letter dated November 17, 2016 (Annexure 9) sent to BSE, vide which BSE was, inter alia, requested to display the same on their notice board and requesting members of their Stock Exchange to refrain from trading and dealing in these shares. However, Noticee 2 did not provide a reply on whether an advertisement in a widely circulated newspaper was issued before the duplicate shares were issued along with documentary evidence regarding the same. Therefore, Noticee 2 was once again advised to clarify the same on March 7, 2022. Further, a reminder was sent to Noticee 2 on March 9, 2022, to provide a reply to the clarification sought on Feb 23, 2022 and March 7, 2022 at the earliest. Vide ATR dated March 10, 2022, Noticee 2, inter alia, stated the following, *'It was verbally informed by company to us that Board Resolution has been passed by company earlier to waive newspaper advertisement to issue duplicate share certificates where market value of shares up to Rs.50000/-. We have already requested company to provide copy of such Board Resolution but the same has not been received by us yet. On receipt of the same, we shall be able to provide copy of Board Resolution of the company.'*

x) From the ATR received from the Company on March 10, 2022, it is alleged that Noticee 1/ STA did not issue an advertisement in a widely circulated newspaper even though the value of the shares was greater than Rs 10,000 based on a Board Resolution (which has not been provided to SEBI) that had been passed by Noticee 1 to waive newspaper advertisement to issue duplicate share certificates where market value of shares up to Rs. 50,000.

xi) From the information available, the following is alleged:

a. Noticee 1 vide letter dated January 12, 2017, inter alia, intimated the complainant that the address mentioned in the application for unclaimed dividend by the duplicate shareholder was different from the address registered in their records.
b. The change of address application dated January 18, 2017 sent by the duplicate shareholder to whom the duplicate shares were issued, was received by Noticee 2 on January 24, 2017. Noticee 2 vide letter dated January 25, 2017 changed the address and intimated the same to the duplicate shareholder.

c. The Change of address has been updated by Noticee 2 only on January 25, 2017. However, the duplicate shares have been issued to the duplicate shareholder on December 5, 2016, on the new address, even before the change of address was updated in the records of Noticee 2/ Noticee 1.
d. Noticee 2/Noticee 1 is silent on how the address of the complainant has been changed in their records from '262 Ainath Society, Behind Bright School VIP Road Karelibaug Baroda' to 'Behind Bright School VIP Road Karelibaug Vadodara' and how the duplicate shares have been issued to the duplicate shareholder on the new address even before the change of address 'B-19 Karelibaug Society behind Bright School VIP Road Karelibaug Vadodara', has been updated in their records.
e. Noticee 1 is primarily responsible for Registrars' work.
f. In case Noticee 1/STA has effected transfer and transferred missing/ lost/ disputed/ stolen shares despite a FIR/ police complaint/ court injunction order, even if it was inadvertently, Noticee 1/STA shall make necessary arrangement of procuring identical quantity of shares, bearing good title, from the open market to be handed over to the transferee duly transferred in his name, as if such procured shares were lodged for transfer by the transferee, within a period not exceeding 60 days from the date of an error or omission detected by Noticee 1/ STA, along with all benefits accrued thereon, from the date of lodgement.
g. Noticee 1/ STA did not issue an advertisement in a widely circulated newspaper even though the value of the shares was greater than Rs 10,000 based on a Board Resolution (which has not been provided to SEBI) that had been passed by Noticee 1 to waive newspaper advertisement to issue duplicate share certificates where market value of shares up to Rs.50,000 .

5. The SCN was duly delivered to the Noticees. In the interest of natural justice an opportunity of personal hearing was given to the Noticees on December 14, 2022 vide notice dated December 1, 2022. Due to unavoidable circumstances, the personal hearings scheduled on December 14, 2022 for the Noticees were adjourned to January 4, 2023 vide letter dated December 9, 2022.

6. Noticee 1 replied to the SCN vide letter dated December 19, 2022 stating, inter alia, the following:

- *It is submitted that the SCN has been addressed to the present Noticee only on account of lapse committed by the Share Transfer Agent in performance of its duties and responsibilities not only under the Memorandum of Understanding executed with the present Noticee but also failing to follow Clause 3 of the Code of Conduct under Schedule III of Regulation 13 of RTI STA Regulations. The present reply to the SCN is being addressed to bring on record the true and corrects facts and circumstances, which will not only demonstrate that the present Noticee has neither violated*

*Instructions To Registrar To An Issue/Share Transfer Agent dated 11th October 1994 nor violated Clause 23 of Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") Circular dated 9th May 2001, as alleged or at all but also will demonstrate that the present Noticee has taken all possible steps to secure and protect the interest of its shareholders.*

- *On 30th January 2016, a Memorandum of Understanding was executed by and between the present Noticee and the Notice 2 whereby the Noticee 2 was appointed as the Share Transfer Agent of the present Noticee (hereinafter referred to as "MOU"). It is submitted that prior to the Noticee 2 being appointed as the Share Transfer Agent, one MCS Limited was the Share Transfer Agent of the present Noticee (hereinafter referred as "**MCS Ltd.**"). This change in the Share Transfer Agent was done in financial year 2015 – 2016 vide Board Resolution dated 8thFebruary 2016.*

- *The present Noticee is given to understand that on 1st October 2016, the Noticee 2 received a letter from one Mrs. Pushpaben Rajendrabhai Patel (hereinafter referred to as the "**Applicant**") residing at 'B-19 Karelibaug Society, Behind Bright School, Karelibaug, Vadodara' who claimed to be a shareholder of the present Noticee. By the said letter, the Applicant informed the Noticee 2 that she had not received dividend for the year 2015 – 2016. Further, by the said letter, the Noticee 2 was requested to issue duplicate share certificates to her, pursuant to the loss of the original share certificates bearing folio number 11519, certificate number 39731 to 39733 and distinctive number 4850501 to 4850800 (hereinafter referred to as "**said Shares**").*

- *As per the terms and conditions of the MOU, the Noticee 2 was solely responsible to receive request for <u>transfer. transmission, endorsement as fully</u> <u>paid up. allotment/call money, split, consolidation, change of address. issue of duplicate certificates in lieu of misplaced /lost certificates</u>. In view thereof, it appears that by a letter dated 20th October 2016, the Noticee 2 informed the Applicant about the procedure for issuance of duplicate share certificates and documents to be submitted in relation to the same. By the said letter, the Noticee 2 requested the Applicant to submit (i) First information report acknowledged copy of police complaint, (ii) indemnity bond including surety and Affidavit affirmed by notary public, (iii) banker verification form duly attested by the Bank Manager, where the Applicant maintains an account inter alia identifying the Applicant and her signature alongwith the self-attested proof of identification and proof of address, (iv) PAN Card and (v) Aadhar card, Passport, Utility Bills, etc. (as proof of address).*

- *It appears that in furtherance of the procedure identified and communicated by the Noticee 2 to the Applicant, the Applicant addressed a letter dated 11th November 2016 and submitted the following documents to the Noticee 2:*

  i. *Acknowledged copy of the police complaint*
  ii. *Indemnity bond*
  iii. *Affidavit*
  iv. *Photocopy of PAN card and Aadhar card*
  v. *Signature verification letter*
  vi. *PAN card*

- *On 15th November 2016, the Applicant addressed a letter to the Noticee 2 requesting them to arrange payment of unclaimed dividend against the said Shares. It is submitted that this letter was forwarded to the present Noticee by the Noticee 2 under cover of its letter dated 16th November 2016. In view thereof, on 2nd January 2017, the present Noticee addresses a letter to the Applicant inter alia forwarding therewith a cheque/ DD for payment of dividend for past years. It is pertinent to note that the address of the Applicant on the letter dated 15th November 2016 was B-19 Karelibaug Society, VIP Road, Behind Bright School, Vadodara '. However, the present Noticee addressed the letter dated 2nd January 2017 to the address which was available in the records of the present Noticee i.e., Behind Bright School, VIP Road, Karelibaug, Baroda- 390016 and not on the address mentioned in the letter dated 15th November 2016. However, the letter was returned undelivered with a remark 'Short Address'. This itself shows that the present Noticee always exercised due diligence and did not address any correspondence to any address other than what was reflecting in its records.*

- *It is submitted that the Applicant contacted the representative of the present Noticee with respect to the unclaimed dividend and informed the representative that the address registered with the present Noticee was different than her actual address. The Applicant enquired about the procedure for changing the registered address in the records. In view thereof, on 12th January 2017, the present Noticee addressed a letter to the Applicant. By the said letter, the Applicant was requested to provide (i) an application for change in address with full name and address, folio number and full details of both new and old address (ii) attested supporting documents viz. driving license, bank statement and (iii) self-attested copy of PAN card for changing the address registered in records of the present Noticee. On 18th January 2017, the Applicant addressed a letter to the present Noticee inter alia providing details of the new address of the Applicant. By the said letter, the Applicant also forwarded photocopy of bank statement and self-attested copy of PAN card. In the said letter, the details of earlier dividend received from the present Noticee was also provided. The present Noticee submits that this letter was forwarded directly by the present Noticee to the Noticee 2for taking appropriate steps. Thereafter, it appears that on 25th January 2017, the Noticee 2 addresses a letter to the Applicant inter alia confirming the change of address in their records i.e., from Behind Bright School, VIP Road, Karelibaug, Baroda, Vadodara – 390016, Gujarat to B-19, Karelibaug Society, B/H Bright School, VIP Road, Vadodara Gujarat 390018.*

- *In the meanwhile, it appears that the Noticee 2 had verified and was satisfied with the documents submitted by the Applicant under cover of her letter dated 11th November 2016. Therefore on 28th November 2016, the Noticee 2 forwarded the duly printed duplicate share certificate in the name of the Applicant to the present Noticee for the signatures of its concerned officers. As stated above, the Noticee 2 was solely responsible for the activity of issuance of duplicate certificate in lieu of misplaced/lost certificate. The Noticee 2 being a registered Share Transfer Agent was expected to fulfill its obligations in a prompt, ethical and professional manner. Further, the Noticee 2 was also expected at all times to exercise due diligence, ensure proper care and exercise independent professional judgment in verifying the documents submitted for issuance of duplicate share certificate. In view thereof, when the printed duplicate share certificate was forwarded to the present Noticee, the present Noticee was under genuine and* *bonafide impression that the Noticee 2 being a registered Share Transfer Agent had fulfilled its duties, obligations and responsibility as required under the MOU, RTA Regulations and relevant circulars issued by SEBI. Therefore, the present Noticee signed the duplicate share certificate and forwarded the same to the Noticee 2 for further action under cover of its letter dated 3rd December, 2016.*

- *It appears that by the letter dated 5th December 2016, the duplicate share certificate was forwarded by the Noticee 2 to the Applicant. It is submitted that thereafter there was no further correspondence in relation to the said Shares. The present Noticee submits that at the relevant time it was not aware to which address did the Noticee 2 forward the duplicate share certificate as the letter dated 5th December 2016 was neither marked nor forwarded to the present Noticee.*
- *Suddenly, the present Noticee received a letter dated 26th May 2021 from the Complainant with regards to dematerialization of the said Shares and non- receipt of share certificate. It is submitted that from the letter dated 26th May 2021 it appears that the Complainant had made a request for dematerialization of the said Shares in the year 2018 however, the Noticee 2 had rejected the request for dematerialization as the said Shares had already been demated at the time of request of the Applicant. It is submitted that inspite of rejection of request for dematerialization in the year 2018, the Complainant took no steps to enquire either with the present Noticee or with Noticee 2 the reasons for such rejection. Further, the Complainant also did not enter into any further correspondence in this regard.*
- *On 13th July 2021, the present Noticee addressed a letter to the Complainant stating that duplicate share certificate no. 42283 for the said Shares was issued in lieu of original share certificate nos. 39731 to 39733 for the said Shares. It was further stated that the duplicate share certificate no. 42283 for the said Shares had already been demated on 30th January 2017 under DP/Clid –12044400 00011494. By the said letter, the present Noticee forwarded the documents received by the present Noticee for issuances of duplicate share certificate. It was thereafter discovered that the said Shares were also sold by the Applicant. In light of the aforementioned, the Complaint filed a complaint August 12, 2021, bearing registration no. SEBIE/GJ2110001683/1 and, (ii) the Complaint dated 8thJuly 2021 bearing registration no. SEBIE/GJ2110001397/1, in relation to fraudulent transfer of the said Shares.*
- *Pursuant to the said Complaints, on 3rd February 2022, a meeting was conducted at the SEBI Ahmedabad office, with SEBI officer, the representatives of the Noticee 2 and the Company representatives, wherein the SEBI officer had directed the Noticee 2 to take necessary action in relation to the said Complaints, within 15 (fifteen) days. Accordingly, on 4th February 2022, the Noticee 2 addressed a letter to the Applicant inter alia recording the summary of events and requesting the Applicant to settle the claim of the complainant within a period of 2 (two) days from receipt of the letter failing which, the present Noticee, the Noticee 2 may be constrained to take legal action.*
- *Since no resolution was forthcoming the present Noticee alongwith the Noticee 2 filed a complaint with the Station House Office, Harni Police Station inter alia*

requesting them to register a FIR against the Applicant under Sections 403, 405, 406 and 420 of the Indian Penal Code, 1860.

7. Noticee 2, vide letter dated December 5, 2022 sought inspection of documents. Acceding to its request an opportunity of inspection of documents was given to Noticee 2 on December 9, 2022. Noticee 2, vide letter dated December 13, 2022 sought for the copy of the reply submitted by Noticee 1. Vide email dated December 14, 2022, the request of Noticee 1 was rejected. Further, vide letter dated December 26, 2022, Noticee 2 once again requested for the copy of the reply of Noticee 1 which was rejected vide email dated January 2, 2023. Subsequently, vide letter dated January 4, 2023, Noticee 2 replied to the SCN stating, inter alia, the following:

- *Noticee 2 was appointed as the Registrar and Transfer Agent ("**RTA**") of Noticee 1 with effect from March 1, 2016. Prior to Noticee 2, one MCS Limited was the RTA of Noticee 1.*
- *On October 01, 2016, Noticee 2 received a letter from one Pushpaben Rajendrabhai Patel ("**Non-genuine Shareholder**") residing at 'B-19, Karelibaug Society, Behind Bright School, Karelibaug, Vadodara – 390018' stating that she had not received a dividend for the year 2015-16. She also alleged that her share certificates in respect of 300 shares of Noticee 1 had been misplaced. Accordingly, she sought payment of arrears of dividend and duplicate share certificates.*
- *On October 20, 2016, Noticee 2 replied to the Non-genuine Shareholder highlighting the procedure for issuance of duplicate share certificates and requested for copies of, inter alia, FIR/Acknowledged copy of police complaint for loss of share certificates, indemnity bond, banker verification form, etc.*
- *The Non-genuine Shareholder replied to Noticee 2's letter on November 11, 2016 enclosing the documents sought by Noticee 2 for issuance of duplicate share certificates. The documents provided by the Non-genuine Shareholder included an Acknowledged copy of the Police Complaint, Indemnity Bond on Rs. 200/- stamp paper, Affidavit on Rs.100/- stamp paper, copy of PAN and Aadhaar Card, signature verification done by her banker. In the Indemnity Bond and Affidavit, the Non-genuine shareholder has confirmed that the share certificates have been lost or misplaced or not traceable. She has also confirmed in the Indemnity Bond that she would indemnify and keep indemnified the Noticees against all actions and claims on account of the said shares or dividends or any part thereof or otherwise in connection with the same and from and against all losses, claims, actions, demands, risks, charges, expenses, damages and losses arising in any manner howsoever.*
- *Noticee 2 also addressed a letter dated November 17, 2016 to Bombay Stock Exchange Limited ("**BSE**") intimating that 300 shares of Noticee 1 held by 'Pushpaben R Patel'*

*had been misplaced. Notice 2 requested BSE, with a copy to National Stock Exchange Limited ("**NSE**"), to display this information on its notice board and requested the members of BSE to refrain from trading and dealing in those shares.*

- *On December 05, 2016, the duplicate share certificates were despatched by registered / speed post to the Non-genuine Shareholder.*
- *On January 12, 2017, Noticee 1 addressed a letter to the Non-genuine Shareholder stating that the address mentioned by the Non-genuine Shareholder was different from the address with Noticee 1. Therefore, Noticee 1 sought, inter alia, an application for change in address, bank-attested supporting documents such as driving license, bank statement, self-attested copy of PAN.*
- *The Non-genuine Shareholder addressed a letter dated January 18, 2017 to Noticee 1 in response to the letter dated January 12, 2017. The Non-genuine Shareholder furnished the details sought by Noticee 1 for change of address enclosing a copy of her PAN and Dena Bank statement / passbook and requested for change in address. The Non-genuine Shareholder also requested for payment of arrears of dividend.*
- *On January 25, 2017, Noticee 2 addressed a letter to the Non-genuine Shareholder stating confirming that the address 'B-19, Karelibaug Society, Behind Bright School, VIP Road, Vadodara – 390018' had been updated in Noticee 2's records.*
- *The physical share certificates held by the Non-genuine Shareholder were dematerialised on January 30, 2017.*
- *Ms. Pushpa Rasik Patel ("**Genuine Shareholder**") – the genuine shareholder of Noticee 1 and the complainant in the present proceedings – had requested for dematerialisation of her shares in November 2018. Her request was rejected and she was informed that duplicate share certificate No.42283 was issued on 28 November 2016 and the said shares were subsequently dematerialised on 30 January 2017. She did not inform Noticee 1 for almost three years about the rejection.*
- *On July 13, 2021, Noticee 1, in response to the Genuine Shareholders letter regarding dematerialization of shares and non-receipt of share certificate, informed the Genuine Shareholder that duplicate share certificates for 300 shares had already been issued and had also been dematerialized on January 30, 2017. The Genuine Shareholder addressed a letter to Noticee 2 in August 2021 informing that she had never requested for change of address or issue of duplicate shares. Noticee 2 was shocked to learn that another person had been impersonating the Genuine Shareholder.*
- *In view of the above, Noticee 2 did further due diligence by visiting the residence of Non-genuine Shareholder, who apprised Noticee 2 that her husband – Mr. Rajendra*

Patel – was a share broker and was involved in all the transactions pertaining to the shares and securities.

- *The Complainant (i.e. the Genuine Shareholder) filed her complaint with SEBI on August 12, 2021. The complaint was automatically forwarded to BSE on August 12, 2021. BSE vide its letter dated September 09, 2021 informed SEBI that it had complied with Noticee 1's request dated July 13, 2021 in respect of the 300 shares of Noticee 1. Subsequently, correspondence ensued between the Noticees 1, Noticee 2 and SEBI in relation to complaint filed by the Genuine Shareholder.*
- *On December 07, 2021, Noticee 2 addressed a communication to SEBI, wherein it provided an explanation for the change in address and the issuance of duplicate certificates. SEBI vide its letter dated December 22, 2021 addressed to Noticee 2 sought further clarification from Noticee 2. SEBI also held a meeting on February 03, 2022 with Noticees 1 and 2 on this matter wherein it sought additional clarification from the Noticees.*
- *On February 03, 2022, a joint meeting was held between the Noticees and the Nongenuine Shareholder. At this meeting, the Noticees confronted the Non-genuine Shareholder with her conduct of cheating and dishonestly inducing the Noticees to issue 300 shares of Noticee 1. The Non-genuine Shareholder claimed that her actions were a result of a misunderstanding and there was no dishonest intention on her part. Further, in another meeting held on February 04, 2022, between the Noticees, the Non-genuine shareholder and original shareholder, the Non-genuine Shareholder's husband – Mr. Rajendra Patel – assured that he would settle the matter with the Genuine Shareholder. Noticee 2 issued a letter on the same date recording the Non-genuine Shareholder's assurance. However, to the shock and surprise of the Noticees, the Non-genuine Shareholder by her letter dated February 11, 2022 did a complete volte face and refused to settle the matter with the Genuine Shareholder.*
- *Noticee 2 addressed a letter dated February 25, 2022 to the Non-genuine Shareholder once again calling upon her to settle the matter, failing which it would initiate appropriate legal proceedings against the Non-genuine Shareholder.*
- *In view of the Non-genuine Shareholder's criminal acts, the Noticees were constrained to file a complaint dated April 13, 2022 with the police under, inter alia, 403, 405, 406 and 420 of the Indian Penal Code, 1860 ("**IPC**"). Noticee 2's Advocates also addressed a communication dated May 20, 2022 to the Non-genuine Shareholder intimating about the filing of a police complaint and called upon her to remedy her illegal actions.*

- *Noticee 2 has also issued a legal notice dated June 02, 2022 to the individuals who had provided indemnity by way of surety on behalf of the Non-genuine Shareholder.*
- *The Noticees vide their letter dated December 12, 2022 to the Police Station requested for an update on the status / stage of the investigation and register an FIR in the said matter.*
- *The present proceedings arise from a SCORES complaint filed by the complainant in respect of cause of action that, by SEBI's own SCN, arose in December 2016 - January 2017. The complainant filed the complaint with SEBI on August 12, 2021, i.e. 5 years after the cause of action arose.*
- *It is a well settled law that no one can take advantage of his or her wrong, non-due diligence or cavalier approach. The SEBI Act, although does not prescribe a period of limitation for initiating proceedings, SEBI's FAQ prescribe a period of limitation for initiating proceedings, SEBI's FAQs prescribe a clear, specific and unambiguous period of limitation. Espousing the cause of such "interest of investors" by Ld. Adjudicating Officer would be perverse in facts as well as in law.*
- *It is an admitted position of SEBI that FAQs issued by it are statutory and legally binding and accordingly, various SEBI orders, such as AO Order (Mr. Santosh Shukla) in the matter of Yes Bank and WTM Order (Mr. Prashant Saran) in the matter of open offer made by Lorgan Lifestyle Limited to acquire shares of SVC Resources Limited, has relied upon the same to determine liability of the parties.*
- *In the present instance, the complaint, which forms the foundation of the present proceedings, was barred by the limitation. Accordingly, issuance of the SCN and continuing thereupon is barred by limitation unless specific jurisdiction is provided to the Ld. Adjudicating Officer, the same cannot be considered by SEBI / Ld. Adjudicating Officer solely based on the representations made by the complainant. It is a trite law that no amount of correspondence can extend the period of limitation or infuse jurisdiction.*
- *It is submitted that while the Inspection Letter had sought for various relevant documents in relation to the Noticees, SEBI has not provided all the documents sought in the inspection.*
- *Further, Noticee 2 had again filed a limited reply with the Ld. Adjudicating Officer dated December 26, 2022 seeking reply of the co-noticee. Noticee 2 also sought an*

opportunity for personal hearing on the utility and relevance of reply of Noticee 1 for Noticee 2's ability to respond to the SCN. However, the same was disposed of by SEBI vide email order dated January 02, 2023 without providing opportunity of hearing to Noticee 2 or reply of co-noticee.

- *Reply of Noticee 1 is also necessary to bring on record the stand of the complainant visà-vis Noticee 1 and Noticee 2, on the basis of which the SCN proceeds. Further, Noticee 2 has reliably learnt that there are developments relating to settlement / resolution between Noticee 1 and the complainant which are fundamental and relevant to the subject-matter of the enquiry. Therefore, the reply of Noticee 1 is also necessary to place on record the documents, if any, relating to:*

  (1) *Settlement / Resolution of the Complaint between Noticee 1 and the Complainant;*

  (2) *Withdrawal of the Complaint by the Complainant and any communication made for discharging anyone including the Noticee(s) for any cause of action.*

- *Noticee 2 respectfully submits that the allegations levied against it are without basis and hinge on an erroneous interpretation of law. Noticee 2 has fully complied with its obligation to exercise due diligence, proper care and independent professional judgment while carrying out its operations, in accordance with the requirements set out in terms of the Code of Conduct under the RTA Regulations.*
- *Insofar as the request for change in address is concerned, as per the data received from the previous RTA, the registered address under the subject folio was 'Behind Bright School, VIP Road, Karelibaug, Vadodara'. Before changing the address of the shareholder in the records, Noticee 2 sought and obtained all the requisite documents, including the application for change in address, bank attested supporting documents such as driving license, bank statement, self-attested copy of PAN, etc. The Non-genuine Shareholder submitted bank statement of Dena Bank and a copy of Aadhaar, which mentioned the new address, viz. 'B-19 Karelibaug Society, Behind Bright School, VIP Road, Vadodara – 390018'. It is only after carrying out these checks that the address was updated in the records of Noticee 2.*
- *As to the issuance of duplicate share certificates, at the time of issuance of duplicate share certificates to the Non-genuine Shareholder, all the requisite documents were sought for and obtained, including Indemnity Bond, Notarised affidavit, acknowledged copy of police complaint, self-attested copy of PAN, self-attested copy of Aadhaar, etc.*

Only after the receipt of these documents did Noticee 2 issue duplicate share certificates.

- *As per the data handed over to Noticee 2 by the previous RTA, specimen signature and PAN were not registered under the subject folio. Even the complete address of the Genuine Shareholder was absent when the data was migrated in Noticee 2's system. SEBI is well aware of this industry wide issue where various RTA's keep their data files in varied manner and it is not and cannot be SEBI's case that Noticee 2's system are not commensurate or Noticee 2 lacks bona fide.*
- *SEBI itself has held at various instances that the primary obligation under Clause 23 is that of the issuer and RTA merely acts as its agent to whom such functions are outsourced.*
- *It is not and it cannot be SEBI's case that Noticee 2 as an RTA had any role or can have any role in scheduling a board meeting of Noticee 1 that had exempted issuing an advertisement in a widely circulated newspaper is the value of the shares is greater than Rs. 10,000/- (in the instant case Rs. 50,000/-). Noticee 2, in no event, can be held responsible or liable for circumstances beyond its control. The SCN also nowhere alleges that it was within the control or efforts of Noticee 2 to issue an advertisement or waive the requirements of Clause 23.*
- *Although Clause 23 of the 2001 Circular requires an advertisement to be issued in the newspaper if the value of shares in respect of whom duplicate share certificates are issued exceeds Rs. 10,000. However, Noticee 1 vide its Board Resolution dated February 9, 2016 in its discretion had resolved that the advertisement is to be issued only if the value was Rs. 50,000/- or more.*
- *Therefore, the non-issuance of the advertisement was not the responsibility of Noticee 2 and cannot be construed as a violation of clause 23 of the 2001 Circular by Noticee 2. As submitted above, SEBI itself in its various orders have exonerated RTA/STA in such similar cases.*
- *It is respectfully submitted that the allegations levied in the Notice are rooted in and premised on the benefit of hindsight. The conduct of the Noticee 2 was in compliance with the applicable legal framework.*
- *Without prejudice to the above, it is humbly submitted that the Noticee 2 had no reason to suspect that the documents submitted by the non-genuine shareholder which included FIR/Acknowledged copy of police complaint for loss of share certificates, indemnity*

bond, banker verification form, etc. identity proofs which were received by it in 2016 were fake. As an RTA, the only process by which the Noticee 2 could carry out its obligation was by determining genuineness of the documents submitted by the NonGenuine Shareholder. As long as this obligation was duly discharged, the Noticee 2 cannot be held liable for the genuineness or otherwise of the submitted supporting documents.

8. The Noticees appeared on the scheduled date of hearing. Noticee 1 appeared and reiterated the submissions made vide letter dated December 19, 2022. Vide email dated January 6, 2023, Noticee 1 made further submissions stating, inter alia, the following:

- *At the further outset, we have to once again submit that the policy of the present Noticee has always been to protect the interest of its investors. Therefore, with a view to protect the interest of the Complainant and to ensure that no harm, prejudice and loss is caused to the Complainant, we have already executed a settlement agreement with the Complainant and the Complainant has been paid a lumpsum consideration of Rs.10,30,000/- (Rupees Ten Lakhs Thirty Thousand Only) as full and final settlement all the claims and/ or demands that the Complainant and her family members.*
- *Further, as stated in our earlier reply dated 19th December 2022, we have taken all possible steps to secure and protect the interest of its shareholders. As soon as we became aware of the fraud committed by the Applicant not only upon the Complainant but also upon the present Noticee, the representative of the Company and Noticee 2 had numerous meetings with the Applicant along with her husband where necessary attempts were made to amicably resolve the matter. In or around February 2022, the Applicant orally agreed and volunteered to settle the matter amicably with the Complainant with respect to the said Shares. However, subsequently the Applicant requested for the supporting documents, which were forwarded to the Applicant by Noticee 2 under cover of its letter dated 4th February 2022. A copy of the said letter was marked to the Company by Noticee 2. By the said letter, the Applicant was duly informed that on the basis of the indemnity bond, affidavit and FIR, the Applicant was legally bound to indemnify the Company. It was further stated that if the claim of the Complainant was not settled within 2 (two) days, the Company, Noticee 2 and the Complainant may take legal actions.*
- *Surprisingly on 11th February 2022, the Applicant addressed a letter to Noticee 2 inter alia disputing the contents of the aforementioned letter dated 4th February*
- *2022 with a malafide intentions. In the said letter, the Applicant wrongly denied having agreed to amicably settle / compensate the Complainant. The Applicant also alleged that she was not aware of the matter since the same was over 6 (six) year old. Effectively, the Applicant backtracked from the understanding arrived between all*

parties that the Applicant would duly compensate the Complainant towards the said Shares.

- *After receiving the said letter, our representative and representative of Noticee 2 had internal meeting to discuss the further course of action in the matter. Our representatives and representatives of Noticee 2 once again attempted to meet the Applicant and her husband however, the Applicant and her husband completely refused to resolve the matter and act on the indemnity provided by them. In view thereof, we were left with no option but to approach the police authorities to file a complaint about the illegal acts committed by the Applicant and her husband hence, on 13th April 2022 we along with Noticee 2 filed a complaint with the Harni Police Station, Vadodara against the Applicant and her husband inter alia seeking registration of the First Information Report (FIR) under Sections 403, 405, 406 and 420 of the Indian Penal Code, 1860.*
- *While Noticee 2 was taking aforementioned steps, our representative and representative of Noticee 2 i.e., Achal Thakkar and Alpesh Gandhi were also simultaneously following up with the police authorities to register a FIR in the matter. We have to state that the representatives visited the Harni Police Station on 31st May 2022 and on 1st June 2022 when they met the PSI Ms. Royla and constable Mr. Bharat. We have to state that we had taken serious note of the matter and were diligently following up with the police authorities to take concrete action in the matter. We have to state that while we were following up with the police authorities, on 2nd June 2022, Noticee 2 also addressed a notice to (i) Mr. Jitendrakumar Ratilal Soni and (ii) Mr. Maganbhai Khusalbhai Parmar i.e., surety with a copy marked to the Company and the Applicant. By the said Notice, the sureties were informed about the fraud committed by the Applicant and were called upon to make good any and all damages, damages, demands, expenses and losses which the Company and the Complainant may sustain.*
- *On one hand, we were taking steps to ensure that the Applicant is punished for her wrongdoings however, on the other hand, we also did not want the Complainant to suffer any loss and/or prejudice therefore, as stated above the present Noticee entered into a settlement agreement with the Complainant and the Complainant has been paid a lumpsum consideration of Rs.10,30,000/- (Rupees Ten Lakhs Thirty Thousand Only) as full and final settlement all the claims and/ or demands that the Complainant viz. Mrs. Pushpa Rasikbhai Patel and her family members, viz. Mr. Rasikbhai Patel (Husband) and Mr. Keyur Patel (son) has and/ or may have against the Company and/ or its officials, the Share Transfer Agent and/ or its officials or any other person connected with the Company and/ or the Share Transfer Agent in relation to the said Shares including any benefits of bonus, rights, splits, dividend and/or any other benefit arising out of or accruing upon the said Shares. Further, as stated above, on being satisfied with the settlement amount, the Complainant and her family members have not only accepted the full and final settlement but also addressed letter dated 9th December 2022 to your good self inter alia unconditionally withdrawing the said Complaint.*
- *As far as the issue of change in registered address is concerned, we must once again bring to your attention that we were not aware of the letters dated 1st October 2016,*

20th October 2016, and 11th November 2016 which were exchanged between Noticee 2 and the Applicant and therefore, we are also not aware as to which address the said letters were being addressed by Noticee 2. It was only on 16th November 2016, Noticee 2 forwarded us a letter dated 15th November 2016 addressed by the Applicant inter alia requesting them to arrange payment of unclaimed dividend against the said Shares. Therefore, on 2nd January 2017, the present Noticee addressed a letter to the Applicant inter alia forwarding therewith a cheque/DD for payment of dividend for past years. We must bring to attention of your good-self that the address of the Applicant on the letter dated 15th November 2016 was 'B-19 Karelibaug Society, VIP Road, Behind Bright School, Vadodara'. However, the present Noticee addressed the letter dated 2nd January 2017 to the registered address which was available in the records of the present Noticee i.e., 'Behind Bright School, VIP Road, Karelibaug, Baroda – 390016' and not on the address mentioned in the letter dated 15th November 2016. However, the letter dated 2nd January 2017 addressed by the present Noticee forwarding the cheque/DD for payment of dividend was returned undelivered with a remark 'Short Address'. This itself shows that the present Noticee always exercised due diligence and did not address any correspondence to any address other than what was reflecting in its records.

- *Since the cheque/DD for payment of dividend was returned undelivered, the Applicant contacted the representative of the present Noticee with respect to the unclaimed dividend and informed the representative that the address registered with the present Noticee was different than her actual address. The Applicant enquired about the procedure for changing the registered address in the records. As stated above, the address available in our record was incomplete and the earlier letter was returned undelivered with a remark 'Short Address'. In view thereof, the present Noticee was required to address the letter dated 12th January 2017 to Applicant at the 'B-19 Karelibaug Society, VIP Road, Behind Bright School, Vadodara'. We have to state that the said letter was addressed only to communicate the procedure for updating the registered address in the record. We have to state that if this letter was addressed only to the registered address the same also would have returned undelivered. In any event, as soon as we received the documents from the Applicant for changing the registered address, the same were directly forwarded to Noticee 2 for verifying the same and taking appropriate steps.*
- *It appears that Noticee 2 after verifying and satisfying itself about the veracity of the documents submitted by the Applicant, addressed a letter dated 25th January 2017 to the Applicant inter alia confirming the change of address in their records i.e., from Behind Bright School, VIP Road, Karelibaug, Baroda, Vadodara – 390016, Gujarat to B-19, Karelibaug Society, B/H Bright School, VIP Road, Vadodara Gujarat 390018. We therefore state that there was no change was made in the registered address by the present Noticee.*
- *We have to state that the entire incidence had transpired on account of the unlikely co-incidence of two people with similar names residing in a nearby area having the same landmark. Further, it appears that some correspondence must have inadvertently reached the Applicant instead of the Complainant. It is clear that the Applicant has taken undue advantage of the same and has committed a fraud not only upon the*

present Noticee but also on the Complainant. We have to state that as per Clause 14 (3) (c) of the RTA Regulations and Paragraph 2 (vi) of SEBI Instructions Circular, Noticee 2 was required to maintain and update records and documents of the Company, including register of members. Furthermore, Noticee 2 was also required to maintain specimen of signatures cards of all members of a Company. It is submitted that the MCS Ltd. might have not been careful in transferring the data of the shareholders of the present Noticee to Noticee 2. However, after Noticee 2 was appointed as the Share Transfer Agent, Noticee 2 had sufficient time and opportunity to rectify the mistakes/ errors committed by the MCS Ltd. and ensure that all relevant data was duly collated and available with them. If Noticee 2 would have informed the present Noticee about the same, the present Noticee would have made necessary efforts to take some corrective steps. We may also state that no such further instances have come to the notice of the present Noticee.

9. Noticee 2 appeared on the scheduled date of hearing and reiterated the submissions made vide letter dated January 4, 2023. Vide email dated January 5, 2023, Noticee 2 was advised to provide the list of documents that were handed to it by the erstwhile RTA, viz., MCS Limited. Vide email dated January 13, 2023, Noticee 2 replied to the query stating, inter alia, the following:

- *Noticee 2 has been able to further identify that the database files provided by the erstwhile RTA, MCS Ltd. to Noticee 1, HLE Glascoat were in a dBASE .DBF file structure customized and maintained (.dbf file is a database file used by dBASE, a database management system application in a customized version by each user basis their features and capabilities). Noticee 2 refrains to comment on the data management by erstwhile RTA as SEBI is already aware of it through its multiple public WTM and AO Orders in respect of the same including the recent SEBI AO Order dated January 04, 2023.*
- *The data as provided by Noticee 1 thereon to Noticee 2 was imported / migrated into Noticee 2's dBASE .DBF file structure. The data structure provided by MCS Limited pertaining to this shareholder, Pushpaben R. Patel, was not in the standard format resulting in an error at the time of conversion wherein the first line of the address of the shareholder was not converted/ populated in Noticee 2's system. Since then, this data has been updated / overwritten in the software with the passage of time by Noticee 2, due to its due diligence from time to time.*
- *As SEBI is aware that an RTA cannot by itself even correct any errors. Even "**For any correction of errors**, RTAs must **take prior approval from the Company** similar to cases of transfers, transmissions etc." due to circular bearing reference no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018. Noticee 2, in the backdrop of current SCN, had also suo motu identified, undertook additional due diligence and wrote to the Company, HLE Glascoat, as recent as on December 31, 2021 and drawing their attention to the list of additional 20 folios which had the current balance of shares physically held by the respective shareholders, however, the*

first line of their address was missing. These additional 20 folios were similar to the complainant (Pushpaben R. Patel).

10. Noticee 2 made further submissions vide email dated January 13, 2023 stating, inter alia, the following:

- *SEBI's own FAQ provides that cause of action should arise within 1 year from the date of complaint.*
- *Noticee 2 is entitled to a fair opportunity to defend itself and such an opportunity includes the ability to review all the relevant underlying documents and supporting evidence, access to factual assertions / data, and all materials in possession of, relied upon and referred to by SEBI to frame its allegations. In the absence of a real opportunity to undertake substantive inspection, the principles of natural justice stand violated and the proceedings are vitiated at the very threshold.*
- *Noticee 2 was acting as the agent of Noticee 1, who is the principal. In fact, even the SCN has noted (in paragraphs 12 and 15(e)) that Noticee 1 is primarily responsible for the acts of Noticee 2. Therefore, it is imperative that Noticee 2 be provided with a copy of the reply to SCN filed by Noticee 1.*
- *Further, the reply of Noticee 1 is necessary for Noticee 2 so as to place on record the documents, if any, relating to settlement / resolution / withdrawal of complaint. Noticee 2 had sought the same so as to find out the terms of settlement / resolution / withdrawal between the principal and the complainant. Any settlement / resolution / withdrawal of the complaint by the complainant has a material bearing on the present proceedings and therefore, it is inconceivable that an order can be passed in the present proceedings without a copy of the reply to Noticee 1 being provided to Noticee 2.*
- *Noticee 2 submits that it has duly complied with its obligation of due diligence imposed in law. "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. Further, the concept of due-diligence is not speculative but based on reasonable and expected actions founded in law.*
- *In the present instance, Noticee 2 had sought and obtained FIR / Acknowledged copy of police complaint, Indemnity Bond, Bank Verification Form, Identity Proof and Address Proof before processing the request of the non-genuine shareholder. Further, Noticee 2 wrote to the stock exchanges requesting them to display the claim of the non-genuine shareholder and inform investors to refrain from trading in said shares. It was only after these conditions were met that Noticee 2 issued duplicate share certificate.*
- *Further, the responsibility of Noticee 2 is to verify the documents provided and not validate them at the time of due diligence. In the present instance, it is no one's case that the documents furnished by the non-genuine shareholder were fake. Noticee 2*

processed the request only after all these documents were obtained which were issued by police / bank / validated by notary.

- *Noticee 2 submits that it is not liable for any alleged violations in respect of the obligation under Clause 23 of the 2001 Circular.*
- *It is submitted that Noticee 1 vide its Board Resolution dated February 9, 2016 in its discretion had resolved that the advertisement for issuance of duplicate shares is to be issued only if the value of the shares was INR 50,000/- or more.*
- *Noticee 2 had no reason to suspect that the documents submitted by the non-genuine shareholder which included FIR/Acknowledged copy of police complaint for loss of share certificates, indemnity bond, banker verification form, identity proofs or address proofs which were received by it in 2016 were not genuine or were received through misrepresentation.*
- *As an RTA, the only process by which Noticee 2 could carry out its obligation was by verifying the genuineness of the documents submitted by the Non-Genuine Shareholder. As long as this obligation was duly discharged, the Noticee 2 cannot be held liable for the validity or otherwise of the submitted supporting documents.*
- *It is submitted that there were no documents whatsoever that were handed over to Noticee 2 by the erstwhile RTA, i.e., MCS Limited or by Noticee 1, viz. HLE Glascoat Limited pertaining to the investor Pushpaben Rasiklal Patel.*

CONSIDERATION OF ISSUES AND EVIDENCE

11. I have carefully perused the charges levelled against the Noticees in the SCN, the replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-
    i. Whether Noticee 1 has violated Instructions to registrars To An Issue/ Share Transfer Agents dated October 11, 1994 and not complied with clause 23 of SEBI circular dated May 9, 2001?
    ii. Whether Noticee 2 violated clause 3 of Code of Conduct under Schedule III of Regulation 13 of RTI STA Regulations?
    iii. Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15HB of SEBI Act?; and,
    iv. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

12. Before moving forward, the relevant extracts of the provisions of SEBI Act and RTI STA Regulations alleged to be violated by the Noticees are mentioned as under:-

Clause 3 of Code of Conduct under Schedule III of Regulation 13 of RTI STA Regulations

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 23 of General Norms for processing of Documents of SEBI circular dated May 9, 2011

23. The Company/ STA shall necessarily obtain the following documents duly executed by the claimant, prior to issue of duplicate shares to him:

a. Indemnity for issue of duplicate Share Certificate/s in the name of the person, in whose name the duplicates are being issued that he has not sold / disposed off the involved shares or acted in any manner by which any interest of third party would have been created, as per the applicable Annexure as detailed here under –

Annexure 8 – Indemnity by registered holder Annexure 8A – General purpose indemnity

Annexure 9 – Indemnity by unregistered transferee/holder in due course

Annexure 10 – Affidavit by transferee

Annexure 11 – Indemnity by transferee for issue of duplicates without producing transfer deeds

Annexure 12 – Letter from buyer under provisions of Section 108 of Companies Act, 1956.

b. Final Court order for issue of duplicate shares required in case of a third party stop transfer ('third party' does not include genuine bonafide transferee).

Company/ STA to:

i. inform all the Stock Exchanges where the shares are traded regarding the loss of shares in lieu of which duplicate shares are being issued, if not already informed

ii. issue an advertisement in a widely circulated newspaper if the value of the shares is greater than Rs 10,000

In case the Company/ STA issues duplicate share certificate based on any other documents, then the Company/ STA shall be solely responsible for the issue of such duplicate share certificates.

13. I have gone through the submissions made by the Noticees and other material on record and I now proceed to deal with the same. Before going into the merits, I would like to first deal with the preliminary objections raised by Noticee 2. It is submitted that as per the FAQs on SCORES issued by SEBI, "…*the complaint shall be lodged on SCORES within one year from the date of cause of action*.." One of the main reason for the establishment of SEBI is protection of investors. In such a case, SEBI cannot overlook the plight of the investor only because it had not followed the timeline stated in the FAQ. Moreover, FAQ is merely a guidance given by SEBI for the benefit of the market. SEBI always reserves the right to reject or examine any complaint lodged on SCORES. Further, the FAQ quoted by Noticee 2 became operational from December 2022. During the relevant period, the FAQ read as "*From 1st August 2018, an investor may lodge a complaint on SCORES within three years from the date of cause of complaint*." In the present case, Pushpa Rasiklal Patel had requested for dematerialization of shares on November 2018 which was rejected and she was informed that duplicate shares were issued on November 28, 2016 and dematerialised on January 30, 2017. She filed a complaint with SEBI on August 12, 2021.

14. Noticee 2 submitted that it had not been provided with the relevant documents in relation to the Noticees. It is observed that all the documents available with SEBI and relied upon and were relevant for the current proceedings were already provided to Noticee 2.

15. Noticee 2 requested for a copy of the reply of Noticee 1 which was denied by the undersigned. Noticee 2 submitted that principles of natural justice mandates that Noticee 2 be provided with the copy of the reply of Noticee 1. It is observed that when a show cause notice is issued to a Noticee, he has to file the reply based on the documents available to him. His reply cannot be based on the reply given by the co-Noticee in the matter. Therefore, I find no merit in the argument that denying the request to provide Noticee 2 with a copy of the reply of Noticee 1 is against the principle of natural justice.

16. I now move to discuss the merits of the case. It is observed that on October 1, 2016, Noticee 2 received a letter from Pushpaben Rajendrabhai Patel residing at 'B – 19, Karelibaug Society, Behind Bright School, Karelibaug, Vadodara – 390018' stating that she had not received dividend for the year 2015-16. She also submitted that she had misplaced share certificates in respect of 300 shares of Noticee 1. Accordingly, Pushpaben Rajendrabhai Patel was advised to submit Acknowledged copy of the Police Complaint, Indemnity Bond on Rs.200/- stamp paper, Affidavit on Rs.100/- stamp paper, copy of PAN and Aadhar card and signature verification done by the banker. Vide letter dated November 11, 2016 Pushpaben Rajendrabhai Patel submitted the relevant documents. Noticee 2, after writing to Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") with a copy to National Stock Exchange (hereinafter referred to as "**NSE**") to display the information regarding misplaced shares to refrain members in those shares and informing Noticee 1 of the same, and obtaining the signature of concerned officers of Noticee 1 on the duly printed share certificate forwarded to Noticee 1 on November 28, 2016, issued duplicate shares on December 5, 2016 based on the documents received.

17. From the material available on record, I note that Noticee 1 had a telephonic conversation with Pushpaben Rajendrabhai Patel, pursuant to which vide letter dated January 12, 2017, Noticee 1 informed her that the address mentioned by her is different from that registered with Noticee 1 and advised her to submit an application for change in address along with bank attested supporting documents such as driving licence, bank statement, self- attested copy of PAN card etc.

18. Vide letter dated January 18, 2017, Pushpaben Rajendrabhai Patel submitted the relevant documents and vide letter dated January 25, 2017 she was informed by Noticee 2 that the address has been duly changed.

19. Subsequently, in November 2018, Pushpaben Rasiklal Patel had requested Noticee 2 for dematerialization of her shares which was rejected by Noticee 2 as the duplicate shares were already issued and dematerialized. She then, vide letter dated May 26, 2021 wrote to Noticee 1 regarding dematerialization of the said

shares and non-receipt of share certificates. Noticee 1, vide letter dated July 13, 2021 informed Pushpaben Rasiklal Patel that duplicate share certificates for 300 shares had already been issued and dematerialized on January 30, 2017. She filed a complaint with SEBI on August 12, 2021.

20. Pursuant to the filing of the complaint, a meeting was conducted with SEBI official by Noticee 1 and Noticee 2 wherein Noticee 2 was directed to take necessary steps to redress the complaint. Vide letter dated February 4, 2022 Noticee informed Pushpaben Rajendrabhai Patel of the sequence of events and requested her to settle the claim. Since no resolution was forthcoming, a police complaint was filed against her by Noticee 1 and Noticee 2.

21. Subsequently, with a view to protect the interest of the complainant, i.e. Pushpaben Rasiklal Patel, Noticee 1 entered into a settlement agreement with her and paid a lump sum consideration as full and final settlement of all claims. Subsequently, she, vide letter dated December 8, 2022 informed SEBI that she is withdrawing the complaint filed by her.

22. I note that Noticee 2 submitted that it had carried out adequate due diligence and while migration of the database files from erstwhile RTA, MCS Ltd. due to some error, the first line of the address of Pushpaben Rasiklal Patel's address was not transferred.

23. I have noted the submissions of Noticee 1 and Noticee 2. From the documents available on record, I find that a CD containing the data set as on February 26, 2016 vide letter dated March 3, 2016 was transferred by the erstwhile RTA, MCS Ltd. to Noticee 1 who in turn provided it to Noticee 2. The CD contained, inter alia, the details of holder, holder address, holder joint, CDSL link, NSDL link, certi etc. While migrating the data into the system of Noticee 2, an error occurred due to which the first line of the address of the shareholder was not migrated. Therefore, the address available with Noticee 2 was "*Behind Bright School, Karelibaug, Vadodara – 390018".*

24. On receipt of the letter from Pushpaben Rajendrabhai Patel, I find that Noticee 2 sought for all the relevant documents for verification. As it had received all the documents including acknowledged copy of the police complaint for loss of shares, there was no reasonable grounds for it to suspect the veracity of the claim. It is observed that only the first line i.e. "*B-19 Karelibaug Society*" was added to the address already available with Noticee 2. Hence, Noticee 2 forwarded the duly printed share certificates with the name Pushpaben R Patel and the new address i.e., *B-19 Karelibaug Society, Behind Bright School, Karelibaug, Vadodara – 390018* to Noticee 1 to obtain the signatures of the relevant officials so that the duplicate share certificates could be issued. I note that while transferring the data to Noticee 2 the list did not include signature specimen and PAN. Hence the contention of Noticee 2 regarding inability to cross check and verify the signature and PAN of the shareholders is accepted.

25. It is noted that on January 30, 2016, a Memorandum of Understanding (hereinafter referred to as "**MoU**") was executed between Noticee 1 and Noticee 2 whereby Noticee 2 became the Share Transfer Agent (hereinafter referred to as "**STA**") of Noticee 1. Prior to this, one MCS Limited was the STA of Noticee 1. Pursuant to the execution of the current MoU, the database file pertaining to Noticee 1 was transferred to it by MCS Ltd. who in turn handed it over to Noticee 2. It is noted that while converting/ migrating the data pertaining to Pushpaben R Patel, due to an error, the first line of the address was not converted in Noticee 2's system. While MCS Ltd. acted as the STA, the correct address was available with it as the equity dividend warrant dated October 1, 2015 was sent by Noticee 1 to Pushpaben R (Rasiklal) Patel at '*262 Ainath Society, Behind Bright School, VIP Road, Karelibaug, Baroda*' which was the correct address. Noticee 2 submitted that while migrating the data into their system, error occurred and the full address was not imported. It further submitted that the data structure provided by MCS Limited was not in the standard format. However, Noticee 2 did not clarify what is standard format. Hence the submission of Noticee 2 is not acceptable. It is observed that Noticee 2 failed to oversee the proper migration of data from the record of the previous STA to its

system. Being the STA it is expected that Noticee 2 should have taken more care in ensuring the correct details of the shareholders are migrated from the database of the previous STA to its own database. In view of the above, I find that Noticee 2 has failed to exercise due diligence and the allegation of violation of clause 3 of Code of Conduct under Schedule III of Regulation 13 of RTI STA Regulations by Noticee 2 stands established. As per Instructions to Registrars To An Issue /Share Transfer Agents dated October 11, 1994, the company is primarily responsible for the work of the STA. In this case, Noticee 1 transferred the CD to Noticee 2 as received from MCS Limited. However, it was not reasonably possible for Noticee 1 to ensure that the complete data pertaining to all the shareholders has properly migrated from the system of the erstwhile STA to Noticee 2. In view of the same, I find that the allegation of the violation of Registrars To An Issue /Share Transfer Agents dated October 11, 1994 by Noticee 1 does not stand established.

26. In regard to the issuance of advertisement in a widely circulated newspaper regarding the misplaced shares where the value of shares is greater than Rs.10,000/-, it is observed that Noticee 1, vide its Board resolution dated February 9, 2016 had resolved that the advertisement is to be issued only if the value of the misplaced shares was Rs.50,000/- or more. Noticee 2 is the agent of Noticee 1 and executes the resolution and decisions taken by Noticee 1. Therefore, Noticee 2 cannot be held liable for the non-publishing of the advertisement.

27. I observe that the expenses for the advertisement has to be borne the shareholder who had lost the shares and to whom duplicate shares are issued. By increasing the threshold from Rs.10,000/- (as stated in the circular) to Rs.50,000/-, Noticee 1 intended not to burden the small shareholders with the expense of newspaper advertisement. Noticee 1 increased the threshold from Rs.10,000/- to Rs.50,000/- to exempt the shareholders from the additional financial liability. In the present case, as the value of shares did not exceed Rs.50,000/-, I find that the allegation of violation of clause 23 of SEBI circular dated May 9, 2011 by Noticee 1 does not stand established.

28. It is observed that Noticee 1 and Noticee 2 had taken various steps to resolve the complaint filed by Pushpaben Rasiklal Patel. On February 4, 2022, Noticee 2 addressed a letter to Pushpaben Rajendrabhai Patel recording the summary of events and requesting her to settle the claim. Vide letter dated February 11, 2022, Pushpaben Rajendrabhai Patel refused to amicable settle the matter. Subsequently, a police complaint was filed against Pushpaben Rajendrabhai Patel. In order to protect the interest of the investor, Noticee 1 also entered into a settlement agreement with Pushpaben Rasiklal Patel and paid lump sum consideration of Rs.10,30,000/- as full and final settlement of all the claims. Pursuant to the settlement claim, the complaint filed by Pushpaben Rasiklal Patel has also been withdrawn. Hence the issue stands addressed.

Issue II: Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15HB of SEBI Act?

29. In view of the violation as established above in respect to Noticee 2, I refer to the order of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which 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 and hence the intention of the parties committing such violation becomes wholly irrelevant…"*.

30. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on Noticee 1 under the provisions of section 15HB of the SEBI Act, which reads as under:

SEBI Act

"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."

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

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.

32. I note from the available records there was no loss suffered by the investor as Noticee 1 had already settled the matter. However, I note that due to the lack of due diligence by Noticee 2 a genuine investor had to face mental harassment and undue hardship. This could easily have been avoided had Noticee 2 exercised proper due diligence and care. As there is no other complaint on record, it cannot be said that the default was repetitive in nature.

Issue III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

ORDER

33. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the AO Rules, I hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) on Noticee 2 under the provisions of section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee 2.

34. Noticee 2 shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable

to Government of India", payable at Mumbai, OR 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

35. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-3), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee shall also provide the following details while forwarding DD / payment information:
    - Name and PAN of the Noticee
    - Name of the case / matter
    - Purpose of Payment – Payment of penalty under AO proceedings
    - Bank Name and Account Number
    - Transaction Number

36. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: January 31, 2023 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**