BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/17375]

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

In respect of:

CB Management Services (P) Limited [PAN: AABCC1781C]

In the matter of Assam Company India Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') vide its circular CIR/MRD/DP/10/2015 dated June 05, 2015, *inter-alia* ,had mandated Issuers/Registrar & Share Transfer Agents of listed Companies to update the Distinctive Number("**DN**") related information of all physical share capital and overall DN range for dematerialized share capital for all listed companies.

2. While ascertaining the compliance status of the aforesaid circular, it was observed by Central Depository Services (India) Limited (**CDSL**) and National Securities Depository Limited (**NSDL**) (both CDSL and NSDL collectively being referred to as "**Depositories**") that there was a difference between total shares lying in dematerialized form and physical form issued shares of the company, namely Assam Company India Limited (hereinafter referred to as "**Company/ By name/ACIL**") , a company whose equity shares are listed on the BSE Ltd. ("**BSE"**) and the National Stock Exchange of India Ltd. (**NSE**) (both NSE and BSE collectively being referred to as "**Exchanges/Stock Exchange**"). Accordingly, SEBI directed the Depositories to carry out inspection of CB Management Services (P) Limited, Registrar and Share Transfer Agent of the company (herein after referred to as "**RTI/STA or Noticee**"). Based on findings of inspection, it was observed by SEBI that Noticee has

violated Regulation 31(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (herein after referred to as "**LODR Regulations**") and Clauses 2 and 3 of Schedule III of Securities and Exchange Board of India (Registrar to Issue and Share Transfer Agents) Regulations, 1993 (herein after referred to as "**RTI/STA Regulations**"). Accordingly, SEBI initiated Adjudication proceedings against Noticee under Section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**), for the aforesaid alleged violation by it.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated March 10, 2021, SEBI appointed the undersigned as the Adjudicating Officer under Section 19 of SEBI Act read with Section 15I and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as `**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HB of SEBI Act, the aforesaid alleged violations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated November 26, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under the provisions of Section 15HB of SEBI Act for the aforesaid violations alleged to have been committed by it.

5. The allegation levelled against Noticee in the SCN is as under

   I. *While ascertaining the compliance status of the aforesaid circular it was observed by Central Depository Services (India) Limited (**CDSL**) and National Securities Depository Limited (**NSDL**) (both CDSL and NSDL collectively referred to as "**Depositories**") that there was a difference between total shares lying in dematerialized form and physical form issued shares of the company, namely Assam Company Limited (hereinafter referred to as "**Company/Assam/ By name/ACL**") , a company whose equity shares listed on the BSE Ltd. ("**BSE"**) and the National Stock Exchange of India Ltd. (**NSE**). CDSL vide its email dated October 04, 2019, intimated* *the difference between total shares lying in dematerialized form and physical form and issued shares of the Company to SEBI. The details of the same are summarized hereunder:-*

	Assam Company Ltd.	*No. of shares(for quarter ended June 2019)*
a	*No. of issued shares*	*30,97,60,963*
b	*No. of dematerialized shares*	*30,73,65,780*
c	*No. of shares in physical form*	*13,02,37,769*
	Difference noted(i.e. (b)+(c)-(a)]	***12,78,42,568***
	Shares held by the promoters of the company(BR Property Developers Private Limited) (all shares in physical form)	***12,78,42,936***

II. *As per Shareholding pattern filed by the Company with NSE and BSE for the period December 31, 2017 to June 30, 2019, it was observed by SEBI that the total fully paid-up equity shares of the company were 30,97,60,963 shares with a face value Re.1 of which Rs. 12,78, 42, 936 shares were held by promoter and promoter group of the company. It was also observed by SEBI that from the quarter ended December 2018, BR Property Developers Private Limited (hereinafter referred to as "**BSR**"), was the sole promoter of the company, holding 12, 78,42,936 shares of company*.

III. *During the course of examination, SEBI observed that as per the insolvency proceedings against the company, NCLT vide its order dated September 20, 2018, approved the Resolution Plan of the applicant, i.e. BSR to infuse funds into Company (the first tranche being Rs. 600 crores) and directed that 12,78,42,936 shares of then promoters of Company shall stand cancelled without any procedure required under the Companies Act or Regulations of SEBI. The Company, vide its letter dated November 27, 2018, informed BSE and NSE about the cited NCLT order and also about the decision of its directors to cancel 12,78,42,936 shares of ex-promoters. The letter was also forwarded to CDSL and NSDL.*

IV. *SEBI also observed that number of physical shares currently held by the new sole promoter, BSR, in physical form, was nearly matching with the number of excess shares, SEBI, vide its letter dated November 11, 2019, directed the Depositories to conduct a joint inspection of the Issuers or agents of Company, in terms of Regulation*

93(2) of SEBI (Depositories and Participants) Regulations, 2018, and file a report containing, inter-alia, the reason for failure of such reconciliation.

V. *Accordingly, Depositories carried out inspection of Noticee, who was the Registrar and Share Transfer Agent of Company on November 15, 2019. The copy of inspection report of CDSL and NSDL is placed as* ***Annexure-5****). The summary of the observations of CDSL and NSDL in the inspection are as under*:

A. Observations by CDSL

a. The company was issued NCLT order dated September 20, 2018 regarding capital reduction and cancellation of entire shareholding of the promoters aggregating to 12,78,42,936 shares of Re. 1/- each. However, issuer/RTA has allotted 12,78,42,936 equity shares to BR Property Developers Pvt. Ltd. (the new promoters) without extinguishment of the existing promoter group shares.

b. Further, issuer has given written confirmation to the exchanges on December 19, 2018 about the issuance of shares to the new promoter and deletion of the existing one, though corporate action with respect to extinguishment of old promoter holding shares is yet to be initiated. Instead, the issuer/RTA has manually deleted 12 demat holding details (1 in CDSL and 11 in NSDL) from back-office and credited to physical folio to match the total number of shares.

c. One of the old promoter demat accounts has 1,89,100 shares, all of which are pledged.

d. Issuer/RTA has submitted share capital reports quarterly with total number of shares as 30,97,60,963 instead of 43,76,03,899. Hence mismatch of 12,78,42,936 is not reported to Depositories and Exchanges.

B. Observations by NSDL

a. In case of ISIN INE442A01024 (Assam Company Ltd.), during the process of reconciliation of records of demat securities with all the securities issued by the issuer, mismatch of 12,78,42,936 shares were observed on a daily basis since December 21, 2018.

b. Demat shares as available in the NSDL system as on March 30, 2019 and June 30, 2019 are 23,12,54,595 and 23,06,02,326 respectively. However, as per the *reconciliation share capital audit report submitted to stock exchange, demat shares in NSDL as on March 31, 2019 and June 30, 2019 is 10,36,00,759 and 10,26,23,245.*

c. *As per MCA data as on November 15, 2019, Assam Company Ltd. has equity shares of Rs. 1/- each having paid-up capital is 30,97,61,000. However, as per share capital audit report as on September 30, 2019 total number of shares is 30,97,60,963, out of which promoters holding is 12,78,42,936 and public holding is 18,19,18,027, resulting a difference of 37 shares.*

VI. *It was observed that on December 19, 2018, Noticee issued 12,78,42,936 physical shares (as per Regulation 31(2) of LODR Regulations, 100% of promoter holding has to be always held in demat mode only) were allotted to the new promoters viz. BSR by Company /Noticee and the same was disclosed to BSE and NSE vide letter dated December 21, 2018. The copy of the letter issued by ACL to BSE and NSE is given as* ***Annexue-6***

VII. *It was observed by Depositories in the shareholding pattern filed for the quarter ending December 2018 that the total shares of ACIL(physical as well as demat) exceeded its share capital by 12 crore as depicted below:*

Item	***C***	***D***
Number of shares/Date	***1412.2018***	***21.12.2018***
Physical	*24,74,113*	*13,03,17,049*
Demat	*30,72,86,850*	*30,72,86,850*
Total-A	*30,97,60,963*	*43,76,03,889*
Paid-up capital	*30,97,60,963*	*30,97,60,963*
Mismatch(A-B)	***-***	***12,78,42,936***

VIII. *It was observed that since the 12 crore shares of ex-promoters in demat mode continued without being extinguished as per the NCLT's order, the aforesaid mismatch occurred. It was further, observed that Noticee in its filing ,manually reduced 12 crores shares in demat, in its back office systems and reported in quarterly filing to BSE/NSE such that the total shares in physical and demat modes were equal to the paid up capital of the company.*

IX. *In view of the above, it was observed by SEBI that:*

i. On December 19, 2018, Noticee Issued 12 crore shares to the new promoter of ACL i.e. BSR, in physical mode.

ii. Noticee did not follow-up with the Depositories for the 12 crore shares of ex-promoters in demat which were not extinguished as per the NCLT order and

iii. Noticee did not consider the Beneficiary Position ("benpos") given by Depositories and manually reduced 12 crore shares, in demat, in its back office systems and reported in quarterly filing to Exchange such that the total of shares in physical mode and demat was equal to the paid-up capital of the company.

*X. In view of the foregoing, it is alleged that Noticee has violated Regulation 31(2) of LODR Regulations and Clauses 2 and 3 of Schedule III of SEBI(Registrar to Issue and Share Transfer Agents) Regulations, 1993 (hereinafter referred to as "**RTI/STA Regulations**")*

6. The SCN was sent to Noticee through Speed Post Acknowledgement due ('**SPAD**') as well as through digitally signed email dated November 29, 2021 and was duly served upon Noticee. Noticee was given fifteen (15) days' time to make its submissions in respect of the allegations made in the SCN. Vide email/letter dated December 10, 2021, Noticee submitted its reply to the SCN.

7. Thereafter, in the interest of natural justice, vide hearing notice date May 20, 2022, Noticee was granted an opportunity of personal hearing before the undersigned on June 02, 2022. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email on May 20, 2022, and was duly served upon it. On the scheduled date of the hearing, the Authorised Representative (**AR**) of Noticee namely, Mr. Subhabrata Biswas, Vice President and Mr. Rana Roy Chowdhury, Manager, appeared on behalf of Noticee and reiterated the submission made by Noticee vide its letter dated December 10, 2021.

8. Due to the difficulties in view of the Covid-19 pandemic, hearing was conducted through video conferencing.

9. The relevant extracts of the reply submitted by Noticee is summarized as u:

   *a. As per Resolution Plan approved by Hon'ble National Company Law Tribunal (**NCLT**), Guwahati Bench, the shares of erstwhile promoters needs to be cancelled and capital reduction shall be pursuant to NCLT order and shall not require any other* *procedures as required under Companies Act, including under Section 66 of Companies Act or regulation of SEBI.*

b. *As they were to hold the AGM of the company and to enable new promoters to participate and vote at the said meeting, they had resorted to issuing physical shares to the new promoters.*

c. *This was only transitory measure, and they had taken cautionary steps of not handing over the new share certificates to the new promoter as the extinguishment of shares of erstwhile promoters had not been made.*

d. *The new promoters was not having demat account and if they had insisted for electronic allotment without extinguishment by the Depositories, the resultant share capital of the company would have exceeded the paid-up capital as was approved in the plan.*

e. *The company vide its letters dated December 19 and 21, 2018 duly informed BSE and NSE about the allotment of the 12,78,42,936 number of equity shares to the new promoters of the company.*

f. *After removing the 12,78,42,936 shares from the demat segment by Depositories, the capital structure of the company in line with the Plan stood as under:*

Category	*Face value*	*No. of shares*
Promoter	*1*	*12,78,42,936*
Public	*1*	*18,19,18,027*
Total		*30,9760,963*

g. *Company had informed Exchanges with a copy to Depositories for cancellation and extinguishment of the shares held by the erstwhile Promoters of ACIL as per Plan.*

h. *Considering that the Physical Shares had to be issued favoring the new Promoter in the circumstances as well as to comply with the requirements under the NCLT Order and since the Depositories did not take action from their side to extinguish the shares of the erstwhile promoters held in the demat mode so as to conform to the wording of the NCLT Order that their shares "shall stand cancelled", they had to reduce / extinguish their holding manually and show the physical shares issued to the new Promoter to reflect the actual position as was Ordered by NCLT.*

i. *The ISIN INE442A01024of ACIL has been suspended on November 01, 2019 and its shares were delisted from both the Stock Exchanges w.e.f. January 20, 2020.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

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

    I. Whether Noticee has violated the provisions of Regulation 31(2) of LODR Regulations and Clauses 2 and 3 of Schedule III of RTI/STA Regulations?
    II. Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?
    III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

11. The text of relevant provisions of the law which are alleged to have been violated by the Noticee and relevant extract whereof is reproduced below:

    Regulation 31(2) of LODR Regulations*: - The listed entity shall ensure that hundred percent of shareholding of promoter(s) and promoter group is in dematerialized form and the same is maintained on a continuous basis in the manner as specified by the Board.*

    Clauses 2 and 3 of RTI/STA Regulations as per Schedule-III

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

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

<u>Issue No. I. Whether Noticee has violated provisions of Regulation 31(2) of LODR Regulations and Clauses 2 and 3 of Schedule III of RTI/STA Regulations?</u>

12. I note from the submissions of Noticee that the Company was under insolvency proceedings pursuant to the order dated October 26, 2017 passed by Hon'ble National Company Law Tribunal ("**NCLT"**), Guwahati Bench. Thereafter, Hon'ble NCLT, Guwahati Bench had passed a final Order dated September 20, 2018, approving the revised Resolution Plan ("**Plan"**), which was submitted by the successful Resolution Applicant,

Abu-Dhabi based BRS Ventures Investment Ltd. ("**BVIL"**). I note that Clause 2 of "CHAPTER-VII of funding plan and sources of funds" of the Plan states the following:

"2 Funding Plan:-The overall Resolution Plan is for a total amount of INR 1214 crores, which shall be funded with a mix of Equity of INR370 .00 crore& Compulsory Convertible Debentures(CCDs) (to be funded by RA or any of its affiliate) of INR 844.00 crore as under:-

(a) 1st tranche funding of ACIL (Upfront Funding)

After the Effective, Date and within a period of 30 days from the Effective Date, for purposes of repayment /CIRP cost under this Resolution Plan, the Resolution Applicant through BRPDL, shall infuse a total sum of INR 600. Crores into to ACIL as under:

- *Equity Shares of INR Rs. 200 crore*
- *Compulsory Convertible Debenture (CCDs) of INR 400. 00 crore"*

……..

13. Thus, as per the said Plan, in the first tranche, the group company of BVIL namely, BR Property Developers Private Limited (hereinafter referred to as '**BRPDL/new promoter'**) had to infuse a sum of Rs. 600 crore into the company by way of Equity Shares amounting to Rs. 200 crore and CCDs amounting to Rs. 400 crore within 30 days from the Effective Date, i.e. date of approval of the Plan. I note that the date of approval of Plan by NCLT is September 20, 2018.

14. From Noticee's submission, I note that subsequent to approval of Plan, the company, in its Board meeting, had approved allotment of 12,78,42,936 to the new promoter, i.e. BRPDL. Further, from the shareholding pattern filed with the BSE, I note that the promoter shareholding of the company for the period December 31, 2017 to June 30, 2019 was as under:

Name of promoters	**No. of shares**						
	Quarter ended December 2017	**Quarter ended March 2018**	**Quarter ended June 2018**	**Quarter ended September 2018**	**Quarter ended December 2018**	**Quarter ended March 2019**	**Quarter ended June 2019**
Aditya KumarJajodia	1,52,170	1,52,170	1,52,170	1,52,170	-	-	-
Aditya KumarJajodia-HUF	10,00,000	10,00,000	10,00,000	10,00,000	-	-	-

Name of promoters	No. of shares						
	Quarter ended December 2017	**Quarter ended March 2018**	**Quarter ended June 2018**	**Quarter ended September 2018**	**Quarter ended December 2018**	**Quarter ended March 2019**	**Quarter ended June 2019**
Ruchika Jajodia	6,25,150	6,25,150	6,25,150	6,25,150	-	-	-
Nisha Kanoi	2,40,000	2,40,000	2,40,000	2,40,000	-	-	-
Dune Leasing Finance Private Limited	26,52,520	26,52,520	26,52,520	26,52,520	-	-	-
Aditya Estate Private Limited	5,50,500	5,50,500	5,50,500	5,50,500	-	-	-
Assam Oil Company Limited	11,90,68,048	11,90,68,048	11,90,68,048	11,90,68,048	-	-	-
Cromwell Securities Limited	35,54,548	35,54,548	35,54,548	35,54,548	-	-	-
BR property Developers Private Limited	-	-	-	-	12,78,42,936	12,78,42,936	12,78,42,936

15. From the above, I note that there was no change in promoters' shareholding during the period December 2017 to September 2018. I observe that BRPDL has been shown as promoters of the company for the quarter ended December 2018 onwards and it was holding 12, 78, 42,936 shares. I also note that BRPDL was holding the aforesaid shares in physical form.

16. SEBI vide its circular CIR/MRD/DP/10/2015 dated June 05, 2015, *inter-alia*, has specified that for ensuring centralised record of all securities, including both physical and dematerialised shares, issued by the company and its reconciliation thereof, Depositories shall create and maintain a database of DN of equity shares of listed companies with details of DN in respect of all physical shares and overall DN range for dematerialised shares. The DN database shall make available, information in respect of issued capital, such as DN Range, number of equity shares issued, name of stock exchange where the shares are listed, date of in-principle listing/final trading approval/ dealing permission, shares held in physical or demat form, date of allotment, shares dematerialized under temporary (frozen) International Securities Identification Number **("ISIN"**) or Permanent (active) ISIN etc., at one place. The aforesaid circular, *inter-alia*, has cast various responsibilities on the part of Depositories which is given below:

“5 *Instruction to Depositories*

5.1.1The depositories shall create and maintain a database to capture DN in respect of all physical equity shares and overall DN range for dematerialised equity shares issued by listed companies

5.1.2The depositories shall provide an interface to the Stock Exchange, Issuers/RTAs for online updation and to the DPs for online enquiry. The same shall be released for live updates latest by September 30, 2015.

5.1.3. The database shall include the following information –

i. Distinctive Numbers (From)	*vii. Trading start date*
ii. Distinctive Numbers (To)	*viii. Physical/demat*
iii. Number of Equity shares	*ix. Date of allotment and date of issue (date of credit to BO account)*
iv. Name of stock exchange	*x. ISIN along with name of company*
v. Date of in-principle listing approval	*xi. Nature of ISIN [Temporary (Frozen) or Permanent (Active)]*
vi. Date of final trading approval / dealing permission	

5.1.4.The depositories shall ensure that the database maintained by them is continuously updated and synchronised. The initial synchronisation may be in batch mode and shall thereafter shift to online mode.

5.1.5The Depositories, in co-ordination with the Stock Exchanges, having nationwide trading terminals and the Issuers/RTAs, shall facilitate the process of populating the database with details of equity share capital and the corresponding DN information as on September 30, 2015.”

17. The aforesaid circular also cast various responsibilities on the part of Stock Exchanges, RTI/STA and Depository Participants.

18. I note that while ascertaining the compliance status of the aforesaid SEBI Circular, CDSL noted difference between (i) total shares lying in dematerialized form and physical form and (ii) issued shares of the company for the quarter ended June 2019. The difference observed is given below:

	Assam Company Ltd.	No. of shares (for quarter ended June 2019)
a	No. of issued shares	30,97,60,963
b	No. of dematerialized shares	30,73,65,780
c	No. of shares in physical form	13,02,37,769
	Difference noted(i.e. (b)+(c)-(a)]	**12,78,42,568**

19. From the above table, I note that the difference observed by CDSL of 12,78,42,936 shares was on account of physical shares held by new promoter, i.e., BRPDL.

20. With regard to the allegation in the SCN in this regard, Noticee, in its reply, has contended that the Board of Directors of the Company had approved the allotment of an equivalent number of shares to the Group Company of the new promoter viz. BRPDL in conformity with the provisions of the Plan. Noticee has further contended that considering that the Annual General meeting (**AGM**) of the Company was scheduled on December 27, 2018, it was necessary to provide the new promoter namely, BRPDL the right to vote and participate at the AGM and accordingly, they had issued physical shares to BRPDL keeping in view the need for adherence to the NCLT Order and as envisaged and under presumption that Depositories would extinguish the shares as per the Plan. Noticee has further contended that if the shares was not issued in physical mode, the ensuing AGM which was called as per the Order would have to be postponed and this would have caused infringement of NCLT order.

21. In this regard, it is pertinent to refer the "Clauses 2(a) and (b) of Chapter IX- Restructuring of Capital" of the Plan which is reproduced hereunder:

"2 Restructured Capital

….

(a) On the date of Upfront Equity Infusion, ACIL shall undertake a capital reduction and cancellation of the entire existing equity share capital held by the Promoters of ACIL i.e. 12, 78,42, 936 Equity Shares shall stand cancelled without requirement of writing the words" and reduced" in the corporate name and style of ACIL

(b) The cancellation of shares and capital reduction:

(i) shall be applicable to all promoters of ACIL

(ii) shall be pursuant to the NCLT Approval Order and shall not require any other procedure as required under the Companies Act, including that under Section 66 of the Companies Act or regulations of the SEBI."

22. From the aforesaid clause, I observe that subsequent to infusion of upfront equity, ACIL had to undertake capital reduction and cancellation of the entire equity shares capital held by its erstwhile promoters. I also note that the infusion of capital by BRPDL had to be completed within 30 days from September 20, 2018. I note that there is no material available on record to show when such capital has been infused by BRPDL.

23. I note that as per Regulations 31(2) of LODR Regulations, listed entity has to ensure that hundred percent of shareholding of promoter(s) and promoter group should be in dematerialized form and the same is maintained on a continuous basis as specified by SEBI on time to time basis. I also note that as per Clause 2 of Code of Conduct of RTI/STA Regulations as specified in Schedule-III says that RTI/STA has to fulfil its obligations in a prompt, ethical and professional manner. Further, Clause 3 of Code of Conduct of RTI/STA Regulations as specified in Schedule-III RTI/STA shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

24. I note that in terms of the aforesaid provisions, the company had to ensure that the new promoter, i.e., BRPDL, should have been holding the shares in dematerialized form only. Further, as specified in Clauses 2 and 3 of Code of Conduct of RTI/STA Regulation, Noticee should have fulfilled its obligation in this regard in a prompt, ethical and professional manner and it had to exercise proper due-diligence, proper care and exercise independent professional judgement in this regard. In this regard, I note that although Noticee has justified its position by stating that such allotment of equity shares in physical form to BRPDL was done so as to comply with the aforesaid NCLT order, the reasoning provided by Noticee w.r.t. conducting AGM is not substantiated with any cogent explanation and supporting documents. Therefore, I am not inclined to accept the explanation offered by Noticee.

25. Noticee, in its contention, has also stated that they had issued physical shares to BRPDL keeping in view the need for adherence to the NCLT Order and as envisaged and under presumption that Depositories would extinguish the shares as per the Plan. Noticee has further contended that cancellation of the shares of the erstwhile Promoters and the

capital reduction, would be pursuant to the NCLT Order and would not require any other procedure as required under the Companies Act, including that under Section 66 of the Companies Act or regulations of the SEBI. Noticee in its reply has also stated that the allotment of shares in physical mode was only for the AGM purpose and as a transitory measure, they had taken cautionary steps of not handing over share certificate to promoters as the extinguishment of shares of erstwhile promoters had not been made. On perusal of Clauses 2(a) and (b) of Chapter IX- Restructuring of Capital", of the Plan, I note that on the date of upfront Equity Infusion, ACIL had to undertake a capital reduction and cancellation of the entire existing equity shares capital held by the erstwhile promoters of the company i.e. 12,78,42,936 shares. Therefore, it was the obligation of the company as well as Noticee, as an agent of the Company, to ensure that the reduction of shares of the promoter was duly completed in accordance with the NCLT order. In this regard, I note that if there had been a delay on the part of extinguishment of shares, as being claimed by Noticee, Noticee, being the RTI/STA of the company, should have followed-up with the Company and/or with the Depositories, for extinguishment of shares of erstwhile promoters before issuing the shares to the new promoter. Noticee has not demonstrated any steps taken by it for extinguishment of shares of erstwhile promoters before issuing the shares to new promoter. Therefore, I am not inclined to accept this contention of Noticee.

26. Noticee in its reply has tried to explain that Company had, vide its letter dated November 27, 2018 addressed to Exchanges and copies to Depositories, intimated their decision for reducing the capital and cancel the entire existing equity share capital held by the erstwhile promoters of the Company. Noticee has further stated that since the Depositories did not take action from their side for extinguishment of shares of the erstwhile promoters held in demat form as to as to conform to the wording of NCLT order, they had reduced /extinguished the shareholding of the erstwhile promoters manually and showed the physical shares issued to the new promoter to reflect the actual position as per NCLT order. In this regard, on perusal of the Company's letter dated November 27, 2018, I note that company had merely informed the Exchanges of their decision to reduce the capital and cancel the entire existing equity share capital held by the erstwhile promoters. I observe that such intimation was in the nature of information to the Exchanges only and do not show any concerted effort on the part of ACIL as well as Noticee to implement the directions contained in the NCLT order as regards the capital

restructuring of ACIL. Except for the letter written to the Exchanges with copies marked to Depositories on November 27, 2018, intimating the decision of the Board of Directors for extinguishment of shares of erstwhile promoters, I note that Noticee has not produced any further evidence or documents to show that they as well as the company had followed-up with the Depositories and ensured implementation of the NCLT Order in this regard. Not only did the Company as well as Noticee not ensure extinguishment of existing promoter capital, they even went ahead and issued fresh equity capital to the new promoter in physical mode, which is in contravention of the aforesaid provisions. Therefore, I find this explanation of Noticee to be devoid of merits.

27. Noticee has further contended that that there was no demat account available of the new promoter and if shares had been allotted in electronic format without extinguishment of shares by Depositories, the resultant Share capital of the Company would have exceeded the paid up capital of the Company. In this regard, from perusal of documents placed on record, I note that the Plan was approved on September 20, 2018 and the Company had decided to cancel the shares of erstwhile promoters in its Board meeting held on November 27, 2018, which was after two months of the effective date. Thus, I note that BRPDL had sufficient time to open demat account with any SEBI Registered Depository Participants and Noticee, being the RTI/STA of the Company, should have ensured that this was adhered to, in terms of Regulation 31(2) of LODR Regulations, before issuing any shares to them. Therefore, I am not inclined to accept the plea taken by Noticee.

28. In view of the foregoing, I find that there has been a violation of Regulation 31(2) of LODR Regulations.

29. It has also been alleged in the SCN that Noticee did not consider the Beneficiary Position (“**BENPOS”**) given by Depositories and manually reduced 12 crore shares, in demat, in its back office systems and reported in quarterly filing to Exchanges such that the total of shares in physical mode and demat was equal to the paid-up capital of the company. Accordingly it has been alleged that Noticee has violated Clauses 2 and 3 of Code of Conduct of RTI/STA as specified as specified in Schedule III of RTI/STA Regulation. In this regard, I find that Noticee has not offered any justification for the same in its reply to the SCN, which amounts to acceptance of the allegation levelled against it.

30. I note that Regulation 31(2) of LODR Regulations casts a obligation on listed entities to ensure that hundred percent of the promoters and promoter group shareholding should be in demat mode and the same should be maintained on a continuous basis in the manner as specified by SEBI. Further, as specified in Clauses 2 and 3 of Code of Conduct of RTI/STA Regulation, Noticee has to fulfil its obligation in this regard in a prompt, ethical and professional manner and it should exercise proper due-diligence, proper care and exercise independent professional judgement. In this regard, it is pertinent to refer the following provisions of RTI/STA Regulations and Companies Act, 2013:

A. <u>Regulation 9A(f) of RTI/STA Regulations</u>

9A Conditions of registration-(1) registration granted under regulation shall be subject to the following conditions, namely:

(a)….

(b)…

…

(f) it shall abide by the regulations made under the Act in respect of the activities carried on by it as a registrar to an issue or a share transfer agent.

B. **Section 2(60) of Companies Act, 2013**:- **Officer who is in default**, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) ….

(ii) …….

(iii) ….;

(iv) ….;

(v) ….;

(vi….;

<u>(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer</u>

31. Thus on harmonious reading of the aforesaid provisions, I find that the Noticee, being an agent of the Company, would be liable for the non-compliance of the provisions of LODR Regulations by the Company and Noticee cannot absolve itself of the responsibility of ensuring that the reduction of shares of the promoter was duly completed in accordance with the NCLT order and that shares were issued to the new promoters only in demat mode. In the matter of Maheshwari Datamatics Private Limited, the learned Adjudicating Officer, in her order dated January 31, 2020 has also held the RTI/STA liable for failure to ensure compliance with Clause 3C of the then Listing Agreement for equity shares.

32. The Hon'ble Supreme Court in the matter of *Chander Kanta Bansal v. Rajinder Singh Anand dated March 11, 2008 (Appeal (civil) 1893 of 2008)* has laid down the definition of "due diligence" and held as follows:

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

33. Thus, placing reliance upon the definition of "due diligence" as laid down in the aforesaid judgement and in view of the aforesaid observations, I find that Noticee failed to fulfil its obligation in a prompt, ethical and professional manner and failed to exercise due diligence, ensure proper care and exercise independent professional judgement in its capacity as RTI/STA of ACIL in respect of implementing the order of the NCLT relating to capital infusion by the new promoter, i.e., BRPDL and in ensuring that the reduction of shares of the promoter was duly completed and that new shares were issued not in physical mode.

34. In view of the foregoing findings, I find that Noticee has violated Clauses 2 and 3 of Code of Conduct as specified in Schedule III of RTI/STA Regulation read with Regulation 31(2) of LODR Regulations.

Issue No. 2: Do the violations attract monetary penalty under Section 15HB of SEBI Act.?

35. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......".

36. Therefore, in view of the violations as established against Noticee and placing reliance on the aforesaid judgment, I find that Noticee is liable for monetary penalty under Section 15HB of the SEBI Act. The text of Section 15HB of the SEBI Ac is reproduced below:

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

Issue No. 3: What should be the quantum of monetary penalty to be imposed?

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

    SEBI Act

    Factors to be taken into account by the adjudicating officer.

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

    (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
    (b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation-*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

38. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the violations of Noticee or the consequent loss caused to investors as a result of the default. Further, I also note that facts on record also does not indicate violations of Noticee are repetitive in nature. It is also seen that ACIL, subsequently being delisted from Exchanges w.e.f. January 20, 2020. However, I find that Noticee being a registered intermediary i.e. RTI/STA is required to comply with the provisions of various Regulations issued by SEBI for safeguarding the interest of investors, which it failed to do in the instant case and such infractions need to be dealt with appropriate penalty which would act as a deterrent for Noticee.

ORDER

39. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs.4,00,000 /-(Rupees Four Lakhs only) on Noticee i.e. M/s. CB Management Services (P) Limited under the provisions of Section 15HB of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

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

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

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

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. CB Management Services (P) Limited and also to the Securities and Exchange Board of India.

Place: Mumbai **SOMA MAJUMDER**

Date: June 28, 2022 **ADJUDICATING OFFICER**