

**BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD
OF INDIA [ADJUDICATION ORDER Ref No.: Order/AP/VS/2020-21/9876]**

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 AND SECTION 19-H OF THE DEPOSITORIES ACT, 1996 AND READ WITH RULE 4(1) OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

M/s. Reliance Capital Limited
Reliance Centre, 6th Floor, North Wing,
Off Western Express Highway,
Santacruz (East), Mumbai-400055

In the matter of **Reliance Capital Limited**

1. Securities and Exchange Board of India (SEBI) conducts inspections of Depository Participants of National Securities Depository Limited (NSDL) and /or Central Depository Services (India) Limited (CDSL) *inter alia* for the purpose as specified in regulation 59 of the SEBI (Depositories and Participants) Regulations, 1996 (DP Regulations). Inspection of M/s. Reliance Capital Limited (the Noticee) was ordered vide Order No. HO/DP/01/12-13 dated May 08, 2012. Subsequently, CDSL had informed that Depository Participant functions had been transferred from the Noticee to M/s. Reliance Securities Limited (RSL) and all the relevant records/documents were transferred to RSL. Thereafter, vide Order No. HO/DP/05/12-13 dated July 25, 2012 inspection of the Depository Participant (DP) RSL was ordered.
2. Thereafter, SEBI conducted inspection of RSL for the period of April 2010-March 2012 on Augusts 13, 2012 and August 14, 2012. Majority period covered under the inspection pertained to the period when the DP activities were carried out by the Noticee. From the material available on record, it is observed that vide letter dated December 26, 2012 findings of inspection of DP operations were communicated to RSL and RSL made its submission vide letter dated February 08, 2013.
3. During the inspection, it was observed that certain complaints {viz, R. Duraisamy / Palanisamy / Malinga D (forwarded by CDSL letter dated January 13, 2011) and Jayanth Sarmah (forwarded by CDSL letter dated June 17, 2011)} were received against the Noticee, however, replies to Depository / Beneficial owner (BO) were sent by Shri Sameer Khobrekar, employee of RSL.

From the said fact, it was gathered that the RCL delegated its DP functions to RSL. Subsequently, it was observed that CDSL granted approval for assignment of DP operations of the Noticee to RSL vide letter No. CDSL/OPS/2011-12/MM/693 dated December 28, 2011 and thereafter vide Deed of Assignment dated January 06, 2012, the Noticee assigned its DP operation to RSL. In terms of regulation 52 of the DP Regulations, the DPs are restricted from delegating its functions as participant to any other person, without the prior approval of the depository. Therefore, in view of the above, it is alleged that the Noticee have violated the provisions of regulation 52 of DP Regulations and clause 2 of the Code of the Conduct specified under regulation 20AA of the DP Regulations.

4. SEBI had issued circular dated April 23, 2010 and August 31, 2010 regarding execution of Power of Attorney (PoA) by the client in favour of Stock Broker and Depository Participant. During inspection, clauses of PoA and contents of the email sent to clients regarding assignment of PoA from Reliance Commodities Limited to RSL were perused and the following violations were observed:

a) The Noticee did not provide the list of clients' & brokers' Bank accounts & demat accounts where funds and securities can be moved. Such bank & demat accounts should be accounts of related party only. Therefore, it is alleged that the Noticee have violated clause 4 of Guidelines for execution of Power of Attorney by Clients favouring Stock Brokers / Stock Broker and Depository Participants of SEBI Circular dated April 23, 2010.

b) In terms of clause 9 of Guidelines for execution of Power of Attorney by Clients favouring Stock Brokers / Stock Broker and Depository Participants of SEBI Circular dated April 23, 2010, the PoA executed in favour of a Stock Broker and Depository Participant by the client should *"be revocable at any time, without notice"*, whereas the clause mentioned by the Noticee to its clients was not in line with the direction given in circular.

c) SEBI vide circular dated August 31, 2010 clarified the point 6 of circular dated April 23, 2010 wherein Stock Broker/ DP may revoke those authorizations that are inconsistent with the present guidelines by communicating the inconsistent clauses to the existing clients. In the event, the deleted clauses are not accepted by the client, Stock Broker/ DP may be required to either obtain fresh PoA or close the account. In case of any addition to the existing PoA, Stock Broker / DP shall be required to obtain a new PoA from clients. In this regard the Noticee did not submit the details of any inconsistent clause furnishes by DP to its clients post issue of SEBI Circular and violated the SEBI Circular dated August 31, 2010.

5. Further, the 4 complaints as mentioned hereinabove in para 3, pertaining to complaints of unauthorized transfer of shares, were examined as follows:

a) **Name of the Complainant: Laxmibai Lohar (BOID:04317621)**

In the matter of Laxmibai Lohar, complaint pertains to unauthorized transfer of 47 shares of State Bank of India (SBI). Complaint was received from CDSL on December 29, 2010 and was replied by DP on January 12, 2011. The complainant had bought 60 shares of SBI as intraday traded on August 04, 2009, however, the same was not squared off at the end of the day and it was squared off by Risk Management System on August 04, 2009. Further, the complainant faced both buyer and seller shortage, due to which a negative balance was created in the complainant's account and to cover this debt, Risk Management team sold 47 share of SBI from the complainant's account on August 12, 2009.

It was observed that although the matter pertained to August 2009, however amount of difference /loss was credited to the complainant's account on January 07, 2011, i.e., after receipt of complaint from CDSL on December 29, 2010 and that for after more than a year,

From the perusal of inspection findings, it was observed that the debits in the complainant's account were executed to clear the negative balance in the complainant's broking ledger, however, any instruction (electronic or otherwise) issued by the complainant's was not available. It is alleged that the Noticee have violated regulation 42(2) and 42(3) and clause 2 and 4 of the Code of Conduct as specified in the Third scheduled read with regulation 20AA of the DP Regulations.

b) **Name of the Complainant: Jayanth Sarmah (BOID:6034924)**

In this matter, complaint pertained to unauthorized transfer of shares. The DP, in its reply to CDSL dated July 01, 2011 had submitted that the scrips were squared off due to trading account showing debit balance. However, submissions made in reply to the inspection findings mentioned that the transactions referred to in the SEBI observation were executed by the DP, based on the instruction of the stock broker/PoA holder, in order to meet the delivery obligations of RSL (as a stock broker) arising on behalf of the broking client, in the T+2 settlement mechanism.

However, any instruction (electronic or otherwise) issued by the complainant was not available in the instant matter and it is alleged that the scrips were squared off without any instruction/order from the complainant. It is alleged that the Noticee have violated

regulation 42(2) and 42(3) and clause 2 and 4 of the Code of Conduct as specified in the Third scheduled read with regulation 20AA of the DP Regulations.

c) **Name of the Complainant: Sumeru Ray Chowdhury (BOID:6438177)**

In this matter, complaint pertained to unauthorized transfer of shares. The DP, in its reply to the complainant had inter alia stated that the scrips were squared off due to trading account showing debit balance. However, submission made in reply to the inspection findings mentioned that the transactions were executed based on the instructions of the stock broker/PoA holder in order to meet the delivery obligations. In one of the email sent to the complainant, DP had stated that *"as there is a negative balance in your account that is why TCS shares were sold on 06/08/2010 against that we have done a FnO transaction"*.

However, any instruction (electronic or otherwise) issued by the complainant was not available in the instant matter and it is alleged that the scrips were squared off without any instruction/order from the complainant. It is alleged that the Noticee have violated 42(2) and 42(3) and clause 2 and 4 of the Code of Conduct as specified in the Third scheduled read with regulation 20AA of the DP Regulations.

d) **Name of the Complainant: Anand Mangalam (BOID:0270132)**

In this matter, complaint pertained to unauthorized transfer of shares. The DP had informed CDSL on July 02, 2011 that the complainant had a debit balance in his account and on account of failure on part of the complainant to fund the account it had liquidated the shares. However, submission made in reply to the inspection findings mentioned that the transactions were executed based on the instructions of the stock broker/PoA holder in order to meet the delivery obligations.

However, any instruction (electronic or otherwise) issued by the complainant was not available in the instant matter and it is alleged that the scrips were squared off without any instruction/order from the complainant.

6. It was observed that in all the above mentioned four matters, the complaints were received at the DP's end on or after December 2010. Further, as mentioned before, the PoA had to be modified as mandated vide SEBI circulars dated April 23, 2010 and August 31, 2010 to be implemented by September 01, 2010. It is alleged that the authority/powers granted under PoA were utilized to debit shares from client's demat account to cover debit in trading ledger which would not have been the case had the PoA been suitably amended as per indicated timeline of the circulars. It is

alleged that the Noticee have violated 42(2) and 42(3) and clause 2 and 4 of the Code of Conduct as specified in the Third scheduled read with regulation 20AA of the DP Regulations. The relevant provision of DP regulation are as follows:

Participants to abide by code of conduct.

20AA. *The participant holding a certificate of initial or permanent registration shall, at all times, abide by the Code of Conduct as specified in Third Schedule.*

42. (1) ...

(2) A participant shall register the transfer of securities to or from a beneficial owner's account only on receipt of instructions from the beneficial owner and thereafter confirm the same to the beneficial owner in a manner as specified by the depository in its bye-laws.

(3) Every entry in the beneficial owner's account shall be supported by electronic instructions or any other mode of instruction received from the beneficial owner in accordance with the agreement with the beneficial owner.

Prohibition of assignment.

52. *No participant shall assign or delegate its functions as participant to any other person, without the prior approval of the depository.*

THIRD SCHEDULE

Regulation (20AA)

CODE OF CONDUCT FOR PARTICIPANTS

1...

2. *A participant shall always endeavour to—*

(a) render the best possible advice to the clients having regard to the clients needs and the environments and his own professional skills;

(b) ensure that all professional dealings are effected in a prompt, effective and efficient manner;

(c) inquiries from investors are adequately dealt with;

(d) grievances of investors are redressed without any delay.

3. ..

4. *A participant shall be prompt and diligent in opening of a beneficial owner account, dispatch of the dematerialisation request form, rematerialisation request form and execution of debit instruction slip and in all the other activities undertaken by him on behalf of the beneficial owners.*

7. In view of the above, SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the violations of provision of DP Regulation and SEBI Circulars dated April 23 and August 31, 2010, by the Noticee. By a *communication-order* dated April 09, 2014 Shri Jayanta Jash was appointed as Adjudicating Officer to inquire into and adjudge under section 15HB of

the SEBI Act. Accordingly, a show cause Noticee (SCN) No. EAD5/ADJ/JJ/AM/OW/16794/2014 dated June 12, 2014 was issued to the Noticee. The Noticee had filed an appeal No. 90 of 2015 in the matter, before Hon'ble Securities Appellate Tribunal (Hon'ble SAT). Hon'ble SAT vide its order dated February 09, 2015 disposed of the appeal, as SEBI had agreed to withdraw the SCN dated June 12, 2014 and to issue a fresh SCN to the Noticee. Subsequent to transfer of Shri Jayanta Jash, Shri Suresh Gupta was appointed as Adjudicating Officer by a *communication-order* dated July 24, 2017, in the matter, to inquire into and adjudge under section 15HB of the SEBI Act and section 19G of Depositories Act. Thereafter, vide *communication order* dated April 02, 2018 Shri Santosh Shukla was appointed as Adjudicating Officer in the instant matter, Subsequent to the transfer of Shri Santosh Shukla vide *communication order* dated January 07, 2020 the case has been transferred to undersigned. It has been advised that except for the change of the Adjudicating Officer the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect*'. It has also been advised that *I should proceed in accordance with the terms of reference made in the original orders.*

8. After the receipt of the records, the notice to show cause no. EAD-2/AP/VS/3147/2020 dated January 24, 2020 (hereinafter referred to as 'SCN') was issued to the Noticee in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') read with section 15I of the SEBI Act and rule 4(1) of the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as 'Depositories Adjudication Rules') read with section 19H of the Depositories Act with regards to alleged violations as per paras 4 and 6 above. By the SCN the Noticee was called upon to show cause as to why an inquiry should not be held against it in accordance with rule 4 of the SEBI Adjudication Rules and rule 4 of the Depositories Adjudication Rules and penalty be not imposed under section 15HB of the SEBI Act and section 19G of the Depositories Act for the aforesaid alleged failures.
9. On February 19, 2020, Mr. Vaibhav Kabra, Chief Financial Officer of the Noticee, requested for inspection of certain documents, accordingly, Noticee had availed the opportunity of inspection of documents on March 02, 2020. However, no reply to the SCN was filed by the Noticee post inspection of documents. Subsequently, from the record, I note that on April 20, 2020, the Noticee had filed for settlement application for settling the issue, however, later the Noticee has withdrawn its settlement application. Accordingly, after withdrawal of settlement application by the Noticee, an opportunity of personal hearing was granted to Noticee on December 11, 2020, which was communicated to Noticee vide email dated December 02, 2020, further, due to

ongoing pandemic situation the Noticee was also informed that if it desire to not appear in person, it may avail the hearing opportunity through video-conferencing on the Webex platform. Mr. Atul Tandon, Company Secretary & Compliance Officer of the Noticee, vide his email dated December 08, 2020 again sought inspection and copies of certain documents and also submitted that due to travelling restriction Noticee would not be able to avail personal hearing. However, in this regard, option for availing personal hearing through video-conferencing on Webex platform was already given to the Noticee vide email dated December 02, 2020.

10. On the schedule date of hearing i.e., on December 11, 2020, neither the Noticee nor its representative appeared before the undersigned. However, Mr. Atul Tandon vide his email dated December 11, 2020 reiterated his earlier submission and also submitted that one Mr. Sameer Khobrekar who is aware of the relevant facts, is not well due to conjunctivitis. I note that the Mr. Atul Tandon who is Company Secretary & Compliance Officer of the Noticee, could himself attend the hearing so fixed on December 11, 2020. I am of the view that being Company Secretary & Compliance Officer of the Noticee, he will be well versed with the matter, moreover, the Noticee was also given an option to avail the opportunity of personal hearing through video-conferencing, where neither the travelling restriction nor the contact with any person come into the picture. Hence, the request of the Noticee was not accepted. Vide SCN and notice of hearing, the Noticee was clearly notified that if the Noticee fails to file its reply to SCN and also fails to avail the opportunity of personal hearing the matter shall be proceeded further based on the material available on record.

11. I note that despite sufficient opportunity being given to the Noticee, the Noticee itself chose not to avail the opportunity of personal hearing. Therefore, I am bound to proceed further based on the material available on record.

12. The only submission which the Noticee has made are as follows:

- a) Despite issuance of administrative warning instant proceeding has been initiated,
- b) Instant proceedings suffer from delay, and
- c) Inspection of the relevant documents has not been provided.

13. I have considered the allegation levelled in the SCN, reply / submission of the Noticee and the relevant material brought on record. The Noticee has raised contention regarding the appointment of erstwhile AO Shri Jatyanta Jash after the issuance of Administrating warning by the SEBI. In this regard I note from the record that initially, SEBI had ordered inspection of RCL. The focus of the inspection was to understand the Investor Grievances Redressal

Mechanism followed by RCL as Depository Participant (DP). However, on being informed by CDSL that DP functions and all the relevant records/documents of RCL had been transferred to RSL, SEBI had conducted inspection of RSL on August 13-14, 2012 for the duration of April 2010 to March 2012. Pursuant to observation found during the inspection the same was communicated to RSL and accordingly RSL has replied to the observation of the inspection.

14. I note from the record that during the inspection SEBI observed that all the instances where rules and regulation of SEBI Act has been breached were during the major period of RCL carrying out the DP functions and the DP functions of RCL was transferred later on to RSL. Thereafter, an administrative warning was issued by SEBI vide letter dated March 21, 2014, to the RCL for the conduct which were rectifiable in nature and mainly on (a) No email id was specifically marked for DP related complaints, (b) Mismatch in number of complaints submitted to SEBI vide pre inspection questionnaire and CDSL vide Investor grievance reports and (c) Wrong classification of complaints. The adjudication proceedings were initiated for the rest of its misconduct as per allegations made in the SCN. Therefore, these proceedings are in addition to and not in duplication of the charges for which Administrative Warning was issued.
15. I note that accordingly, Shri Jayanta Jash was appointed as AO in the matter and SCN was issued to RCL. Later RCL filed an appeal in Hon'ble SAT on the ground that SEBI did not have the jurisdiction to initiate adjudication proceedings pursuant to issuing administrative warning, on the same set of facts and without any new/additional discovery, as the same would amount to double jeopardy and would be barred by the principles of res judicata and principles of analogues thereto. I note from the record that the ground raised by the Noticee is factually incorrect as the administrative warning issues pertained to certain violations which were rectifiable in nature and whereas the violation as alleged for the adjudication proceedings were different in nature. Therefore, in view of the above the contention of the Noticee is not tenable.
16. The Noticee has contended that the instant proceedings suffer from delay, in this regard I note that due to the nature of the allegation as alleged in the instant proceedings and transfer of DP functions from RCL to RSL, there were some technical issues, for which SEBI had to take a view to ascertain the initiation of these proceedings. Further, in addition to above due to various reasons whether, its transfer or superannuation of the erstwhile AOs, the case has been assigned to different AOs for adjudication proceedings. The factual basis on which the SCN dated June 12, 2014 was issued are same as there is no change in report and fact findings of the inspection. However, there is an apparent change in charging provisions. As regards the SCN dated June 12, 2014, I note from the order dated February 09, 2015 by Hon'ble SAT that SEBI agreed to issue

fresh show cause notice to the Noticee. Thereafter, various legal and technical issues arose as discussed in para 14 and they were settled and thereupon a fresh *communication-order* was issued by competent authority for the appointment of AOs in the matter which ultimately led to issue of the instant SCN dated January 24, 2020 to the Noticee. As regards the issue of delay raised by the Noticee I observe that in the case of Ravi Mohan & Ors. Vs. SEBI (SAT Appeal No. 97 of 2014 decided on 16.12.2015), Hon'ble SAT while referring to its own decision in HB Stock Holdings case (Appeal no. 112 of 2013 decided on August 08, 2013) and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.), held as under:

“...Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...”

17. The Noticee has further contended that SEBI has not provided it with all the relevant documents, reports and had not provided inspection of the said documents, in this regard, I note that the Noticee had availed the opportunity of inspection of relevant relied upon documents on March 02, 2020. Further, I note that all the relied upon copies of the documents in the matter were provided to the Noticee alongwith the SCN. Therefore, the contention of the Noticee was not accepted and hence rejected. Moreover, in this context, it is settled position of law that only the relied upon documents has to be provided for inspection to the Noticee and the same position has been upheld by the Hon'ble Supreme Court, various Hon'ble High Courts and also by the Hon'ble SAT in number of its rulings. In the recent ruling of Hon'ble SAT in the case of *Shruti Vora Vs. Securities and Exchange Board of India*, in Appeal Number 28 of 2020 decided on February 12, 2020 held that *“...The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents*

which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon...

18. I note from the record that on the merits of the case, the Noticee has not filed any reply pertaining to the allegation as alleged in the SCN rather it has raised its objection on the appointment of the undersigned as AO and initiation of the instant proceedings. Further, in this case, in absence of any response from the Noticee, and non-availability of any material suggesting contrary to the charges/allegation, the only possible conclusion is that the allegation and charges have been admitted by the Noticee. In this regard, the observations of Hon'ble SAT in the matter of *Classic Credit Ltd. vs. SEBI* (Appeal No. 68 of 2003 decided on December 08, 2006) are relevant to rely upon wherein it has that- "... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them". Further, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), has, *inter alia*, observed that: "... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices..."
19. Despite the above legal position, I consider it necessary to deal with the allegation in this matter as under:
- a) In terms of regulation 52 of the DP Regulations, the DPs are restricted from delegating its functions as DP to any other person, without the prior approval of the depository. I note from the record that in the process of Investor grievance redressal mechanism, there were certain complaints against RCL as DP and in reply to those complaints the replies were given by RSL in the capacity of DP to CDSL/the Complainants. I, further note from the record that the DP functions of RCL was transfer to RSL way later than filing of those replies to CDSL/the Complainants. Hence, I am inclined to take a view that the Noticee has delegated its function as DP to RSL and thus, in violation of the provisions of regulation 52 of DP Regulations and clause 2 of the Code of the Conduct specified under Third schedule read with regulation 20AA of the DP Regulations.
 - b) As per regulation 42(2) and 42(3) the Noticee was obligated to transfer of securities to or from a beneficial owners account only on receipt of instruction from the beneficial owner. As alleged in the SCN and more specifically in para 5 of this order, the Noticee failed to

provide any receipt of instruction (electronic or otherwise). Therefore, the Noticee has violated the provisions of regulation 42(2) and 42(3) of DP Regulations and clause 2 and 4 of the Code of the Conduct specified under Third schedule read with regulation 20AA of the DP Regulations.

- c) Further, SEBI vide Circulars dated April 2, 2010 and later clarified by August 31, 2010 instructed the Stock Broker and DP that PoA executed in favour of Stock Broker and DP by the client should *'be revocable at any time, without notice'*. Vide aforesaid circulars it was also directed that stock brokers shall take necessary steps to implement the circular dated April 23, 2010 latest by May 31, 2010 for the new clients and ensure to take necessary steps latest by September 01, 2020 to revoke those authorization given by the existing clients to the stock brokers and DP. However, from the record, I note that the complaints as alleged in the SCN were post the issuance of the circulars where the RCL have not revoked the PoA of the complainants. Thus, it implies that the aforesaid complaints would not have occurred in first place, if the RCL had revoked the PoA and implemented the circular dated April 23, 2020. Therefore, in view of the above, I am of the view that RCL has violated the SEBI circular dated April 23, 2010 and August 31, 2010.
- d) Therefore, the breach in the facts and circumstances as found hereinabove, in my view attracts the monetary penalty under section 15HB of the SEBI Act and 19G of the Depositories Act, which read as follows:

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.*

Depositories Act

Penalty for contravention where no separate penalty has been provided.

19G. *Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws 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.*

20. Further, in these facts and circumstances of the case, the quantum of penalty has to be adjudged taking into account the conduct of the Noticee as found in this case and the principle of proportionality. The failure as found in this case, had clearly defeated the purposes of the DP Regulations i.e. investor protection and ensuring regulation of market. For the purpose of adjudging the quantum of penalty it is relevant to mention that under section 15I of the SEBI Act and section 19G of the Depositories Act, imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J of the SEBI Act and section 19I of Depositories Act. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J of the SEBI Act and section 19I of Depositories Act., which reads as follows:-

SEBI Act

15J - Factors to be taken into account by the adjudicating officer

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 investor/ +s as a result of the default;*
- (c) the repetitive nature of the default.*

Depositories Act

Factors to be taken into account while adjudging quantum of penalty 19-I. *While adjudging the quantum of penalty under section 19 or section 19H, 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.*

21. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default is not brought on record and is unascertainable. I note that the violations pertain to a year of 2010. I also note that there is nothing on record that there are investor complaints pending, as

on date, against the Noticee. I also note that the SEBI circular dated April 23, 2010 read with circular dated August 31, 2010 relates to execution of PoA by the client in favour of stock broker & DP, and same were issued in the interest of the investors and to protect them from any mis-use of the clauses under PoA. Any non-adherence of the same cannot be considered as mere technical omission.

22. Considering the facts and circumstances of the case and above factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules and 19H of Depositories Act read with rule 5 of the Depositories Adjudication Rules a, I hereby impose a consolidated monetary penalty of ₹1,00,000/- (Rupees One Lakh only) on Noticee *viz.*, Reliance Capital Limited, the said penalty is commensurate with the violation committed by it in this case.
23. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in
24. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to "The Division Chief, EFD-DRA-2, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, "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 the 'Payer/Noticee'	
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)	

25. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for

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

26. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: December 22, 2020

Place: Mumbai

Amit Pradhan
Adjudicating Officer



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE