WTM/GM/MIRSD/MIRSD3/12321/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 27(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN RESPECT OF –

NOTICEE	**LINK INTIME INDIA PRIVATE LIMITED** **REGISTRAR TO AN ISSUE AND SHARE TRANSFER AGENT** **SEBI REGISTRATION NO. – INR000004058**

BACKGROUND –

1. Link Intime India Private Limited (hereinafter referred to as '**Noticee**') is registered with Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') as a Category-I Registrar to an Issue and Share Transfer Agent (hereinafter referred to as '**RTA**') having SEBI registration number INR000004058.

2. SEBI had conducted a comprehensive inspection of the Noticee to examine Noticee's complaince with the SEBI Circulars and provisions of SEBI (Registrar to an Issue and Share Transfer Agents) Regulations 1993 ("**RTA Regulations**" in short). While inspection in respect of regularory compliance and RTI activities was undertaken on February 23-24, 2015, the inspection of

STA activities was carried out on September 02, 2015. The findings of the inspection were as follows:

Specimen Signatures:

(a) It was observed that the Noticee handled 1,036 listed companies. However, on an average, specimen signatures for only 27.07% of the folios were available with the Noticee. Specimen signatures for 100% of the folios were available in case of only 281 companies. In case of 208 companies, the availability of specimen signatures ranged from more than 90% to less than 100% of the folios and in case of 302 listed companies, the availability ranged from more than 50% to less than or equal to 90% of the folios. In case of remaining 245 listed companies, availability of specimen signature was less than or equal to 50% of the folios. Thus, it was observed that in case of several companies, the specimen signatures were not available with the Noticee. Specimen signatures are the basic folio details and are most important check for entertaining investor requests. Hence, by not maintaining specimen signatures, the Noticee had put the interests of the investors at risk.

(b) As per Instruction 2 (vii) of the Instructions to Registrar to an Issue / Share Transfer Agent contained in RRTI Circular No.1 (94-95) dated October 11, 1994, under the heading 'Records to be maintained by STA', specimen signatures are to be maintained by RTA. Further, as per Regulation 14(3)(c) of RTA Regulations, STAs should maintain such other records as may be

specified by the Board for carrying out the activities as share transfer agents. By not maintaining the specimen signatures, the Noticee had failed to adhere to the above requirements.

Transfer Requests processed without possession of specimen signatures:

(c) During the inspection period, the Noticee received 1,02,706 transfer requests. On the basis of sampling, two companies, viz. Bharat Gears Limited (Bharat) (604 transfer requests) and GEI Industries Systems Limited (GEI) (12 transfer requests) were shortlisted. Out of this sample, 122 and 12 transfer requests of Bharat and GEI respectively were checked by the inspection team.

(d) In respect of samples pertaining to Bharat, it was observed that out of 122 transfer requests, 119 were processed and 3 were rejected for various reasons. Out of the said 119 transfer requests, 50 were processed without possession of specimen signatures. In respect of these 50 requests, it was observed that specimen signature records of the transferors as shown by the Noticee were in fact the same as those appearing on the physical copy of the Share Transfer Forms (STFs) pertaining to these transfer requests. This implies that the Noticee had in fact scanned the specimen signatures at later dates from the STFs themselves and not from any other original source, such as application form, previous transfer request submitted as a transferee, records obtained from previous RTAs etc. Thus, the Noticee processed the abovementioned 50 requests without having specimen

signatures and without making any further checks on the genuineness of the transfer requests. It also tried to complete its records by scanning signatures at a later stage, probably to avoid any regulatory scrutiny. The alleged presentation of such records to the inspection team as genuine records amounted to misleading of the inspection team which is a violation of the provisions of Clause 1 of the Code of Conduct prescribed under Regulation 13 of RTA Regulations. Also, since the Noticee had submitted two different sets of specimen signatures for the same sample, it is alleged that the Noticee had not exercised due diligence, not maintained high standards of integrity in the conduct of its business and has not fulfilled its obligations in an ethical and professional manner, thereby violating Clauses 2 and 3 of the Code of Conduct.

(e) The figures mentioned above were only for one client-company which was chosen during sampling out of total 1,036 listed companies handled by Link Intime and that too in respect of 122 transfer requests shortlisted as a sample out of total 604 transfer requests received in respect of the said one client company. Thus, it was observed that 40% of the total transfer requests received in the scrip of Bharat Gears Ltd. were processed by the Noticee without possession of specimen signatures of the transferors and without making any further checks on the genuineness of the transfer requests and by scanning the signatures from the STFs itself at a later stage.

(f) As regards the samples pertaining to GEI, it was observed that out of 12 transfer requests, 8 transfer requests were processed by the Noticee and 4 were rejected for various reasons. It was observed that all the above mentioned 8 requests (100% of the processed requests) were processed without possession of specimen signatures in the folios. Out of the said 8 requests, 2 requests were processed on the basis of seller notice and remaining 6 requests were processed on the basis of record to confirm genuineness of the transfer requests such as bank attestation, copy of PAN Card and address proof etc.

(g) As per point 3 of Norms for Objection prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001, in case of material difference in signature/s of transferor/s on Transfer Deed vis-à-vis specimen signatures recorded with the Company/ STA, the STA is required to send to the transferee an objection memo in the prescribed format in original, marking the reason as "material signature difference". Simultaneously, a copy of the objection memo is required to be sent to the transferor/s with an advice to lodge documents to facilitate the Company/STA to take on record fresh specimen signature. If the above provisions have been prescribed for material difference in signature of transferor, then it follows that at least similar provisions should have been followed by the Noticee in cases of non-availability of specimen signature of transferors. By not following such provisions, Link Intime has allegedly violated point 3 of

Norms for objection prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001.

(h) Further, by not exercising due care and diligence while processing transfer requests, the Noticee has also allegedly violated Clause 3 of the Code of Conduct prescribed under Regulation 13 of the RTA Regulations.

3. Considering the above, SEBI initiated proceedings under the SEBI (Intermediaries Regulations), 2008 ("Intermediaries Regulations", in short) against the Noticee and appointed a Designated Authority (DA) to enquire into the aforesaid violations under Section 12(3) of the SEBI Act read with Regulation 23(b) of the Intermediaries Regulations. The DA issued a show cause notice (SCN) dated October 08, 2018 to the Noticee under Regulation 25(1) of the Intermediaries Regulations and upon a consideration of the facts and material before him, found the Noticee to be in violation of the abovementioned provisions of law. Accordingly, the DA, vide his report dated May 27, 2019 (DA Report), submitted under Regulation 27 of the Intermediaries Regulations, recommended that the Noticee be prohibited from taking up any new assignment for a period of 6 months.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING –

4. Thereafter, a show cause notice dated June 04, 2019 ("post-enquiry SCN") was issued to the Noticee, enclosing therewith a copy of the DA Report, calling upon the Noticee to show cause as to why action as recommended by the DA or any

other action as deemed appropriate by the Competent Authority should not be taken against it, in terms of Regulation 28(1) & (2) of the Intermediaries Regulations.

5. In response to the post-enquiry SCN, the Noticee submitted reply dated July 02, 2019. Thereafter, the Noticee was granted an opportunity of personal hearing on February 03, 2021 which was attended by the Noticee's authorized representatives during which they reiterated the Noticee's submissions contained in letter dated July 02, 2019. Subsequently, the Noticee submitted further written submissions dated February 10, 2021 and March 09, 2021.

6. In the meantime, the Noticee through its various letters and reminders including letter dated September 24, 2019 had requested for grant of inspection of certain documents. However, during the personal hearing, the Noticee had submitted that it did not wish to proceed with such request.

7. The Noticee vide letter dated July 02, 2019 and during the personal hearing on February 03, 2021 has submitted *inter alia* the following:

(a) The Noticee denies all the findings made against it in the DA Report.

(b) The DA Report does not substantiate any specific breach of the SEBI Act, 1992 or the RTA Regulations. The sole basis of the report is that the Noticee ought to have verified transfer forms where the specimen signatures were not available. However, the Noticee submits that the RTA Regulations do

not enjoin a positive duty on an RTA to seek out specimen signatures when the company has failed to ensure that specimen signatures are available with the RTAs. The Noticee submits that in the absence of specimen signatures, RTAs do often liaise with companies for obtaining such specimen signatures. However, it does not follow that STAs were at the relevant time required to suspend verification of transfer requests pending receipt of such specimen signatures. In any event, no penalties can be imposed on the STA notwithstanding that the RTA may have acted with complete diligence and in good faith in performing its activities.

(c) The Noticee submits that the report acknowledges the problems of missing signatures and also notes that the companies have been asked to provide the missing specimen signatures thereby signifying that the onus to provide the missing signatures was on the concerned companies and not the RTAs. Notwithstanding this, SEBI has noted on the DA Report that the RTA ought to have taken extra effort to collect the specimen signatures from such companies and that SEBI's knowledge of the problem does not absolve the STA of such non-compliance. SEBI acknowledges that the problem of non-availability of specimen signatures for all companies is an industry-wide problem. In fact, even as of date, specimen signatures for all companies are not available with various RTAs. This is also evidenced by representations made by Registrars Association of India (RAIN) to SEBI and letters written by SEBI to the companies. However, the DA Report proceeds to thrust

liability solely on the Noticee as if it were solely RTA's statutory obligation to ensure availability of specimen signatures.

(d) As regards the observation in the DA Report regarding non-availability of specimen signatures, it may be noted that the Noticee has taken efforts to collect the specimen signatures from time to time and has been working towards digitization of its records since 2015. Such efforts are geared towards ensuring that the Noticee develops a robust verification systems and processes in keeping with the best industry practices.

(e) In 2014, SEBI had vide letters dated May 30, 2014 informed many of the client companies of the Noticee about non-availability of signature records with the Noticee since complete signature database of the shareholders of the client companies had not been provided to the Noticee. SEBI had further advised the client companies to take steps on an urgent basis to ensure that the specimen signatures of all the folios are made available, and to send SEBI an intimation within 30 days. These steps recognize the fact that the unavailability of specimen signatures was a problem at the clients' end and not at RTA's end.

(f) Based on the observations and findings of SEBI inspection of 2015, the Noticee has been diligently complying with this procedure of sending objection memos to the transferees informing them about the non-availability of the signature of the transferors and advising them to approach the transferor to get his / her signature registered with the Noticee by

completing necessary formalities. During the period from February 2015 till May 2019, the Noticee has sent 206269 objection memos to the investors who submitted their transfer / demat requests due to mismatch with the specimen signature / non-availability of signature in the records of RTA, informing the investors / shareholders to have the signature of the shareholder registered by completing the necessary formalities.

(g) SEBI vide circular no. SEBI/HO/MIRSD/DOP1/CIR/2018/73 dated April 20, 2018 mandated issuer companies through their RTAs to take special efforts to collect copy of PAN and bank account details of all securities holders holding securities in physical form. At this juncture, the Noticee took initiative to request client companies to ensure collection of signatures to be taken up along with collection of other documents mandated by SEBI. As per this initiative, the Noticee sent out more than 19.75 Lakh letters by speed post and registered post and approximately 39 Lakh letters by courier / ordinary post as first and second reminder on behalf of such client companies who agreed to comply. The Noticee received responses from 163443 investors for PAN and Bank details, out of which 62507 investors also provided signatures for registration which was successfully carried out where earlier signatures were not available.

(h) The Noticee is continuously putting its best possible efforts to collect the signatures from the shareholders at every available opportunity. It will continue to ensure that it does not carry out transactions where specimen

signatures are not available with the Noticee. However, the Noticee's efforts require coordinated support from the issuer companies and the investors and any delay in obtaining the specimen signatures cannot be treated as violation of law on part of the Noticee. It is completely unjustified that the Noticee is being made liable for failure to take extra efforts to collect specimen signatures from old companies, as observed in the DA Report.

(i) The observation in the DA Report that the requirement to issue an objection for mismatch in specimen signatures applies even in case of absence of specimen signatures was never the position taken by SEBI until September 2015, when it was made part of SEBI LODR Regulations, 2015. In these circumstances, it would be a grave travesty to impose a penalty on the Noticee without there being any specific requirement to that effect at the relevant time.

(j) With respect to 50 transfer requests pertaining to Bharat, the DA Report proceeds entirely on surmises and levels allegations of misleading SEBI without sufficient substantiation. The Noticee reiterates that it was in possession of the specimen signatures in the abovementioned 50 transfer requests, which were used as basis for processing the transfer requests. The Noticee had inadvertently provided the incorrect specimen signatures with respect to these transfer requests at the time of SEBI's inspection. It was a bona fide mistake which was subsequently rectified by providing the correct specimen signatures along with the reply dated October 30, 2015. It is

incorrect to say that the Noticee tried to mislead the SEBI Inspection Team. It is also pertinent to note that no complaints have been received and no litigation is pending with regard to any transfer of shares of Bharat Gears Ltd. In view of the above, Point 3 of the Objection Norms are not attracted in the present facts.

(k) Having regard to the above factors, the penalty proposed in the SCN is totally unjustified and requires reconsideration. Without prejudice, the Noticee submits that the penalty of prohibition to take up any assignments is excessive and no reasons have been ascribed to support the imposition of such penalty.

(l) The Noticee has always complied with and continues to comply with all the regulatory requirements as well as the best industry practices while discharging its obligations as an STA and has exercised due care and diligence in exercising its duties as STA towards all its clients. The Noticee is currently servicing more than a thousand clients and has developed a reputation for its integrity and commitment to its clients in the three decades that it has been a part of the share registry industry.

(m) Further, SEBI has opined in its Report that STAs should stop servicing corporates who do not provide all desired documents and should not accept any fees also. However, any such step will cause serious inconvenience to the investors. As is known to SEBI, most RTAs are saddled with the problem of non-availability of specimen signatures for many of their client

companies. Any such step will result in non-availability of RTA services to investors of hundreds of companies, thereby posing a grave risk to the efficient functioning of the securities market and may lead to suspension of trading in such securities since such companies may not be able to comply with the listing obligations in absence of availability of RTA services.

(n) The Noticee submits that any imposition of penalty would be completely contrary to canons of securities laws and jurisprudence and would irreparably prejudice the Noticee's reputation in the industry which has been built on the basis of integrity and excellence in rendering services to its varied set of clients.

(o) In order to resolve the industry wide issue of dearth of specimen signatures, the Noticee recommends that SEBI issue a direction whereby based on the PAN registered with the RTAs and where signatures are not available with RTAs, RTAs are allowed to access and verify the signatures available in the depository system and process the request. The Noticee also recommends that similar direction be issued by SEBI to banks whereby banks provide the specimen signature to RTAs whose bank account information is available in RTAs records.

8. Further, the Noticee, vide letters dated February 10, 2021 and March 09, 2021, has submitted *inter alia* the following:

(a) A bare perusal of the SCN demonstrates that it suffers from non-application of mind. The SCN simply forwards the Enquiry Report to the Noticee. There appears to be no independent analysis of the contents of the Enquiry Report or the observations contained therein. The SCN itself completely lacks any specifics and therefore, ought not to be proceeded with.

(b) The present proceedings are being conducted in violation of the principles of natural justice as the Noticee has not been afforded the opportunity to inspect documents which form the basis of the allegations raised against it, despite repeated requests.

(c) The SCN proceedings must be abandoned as the Enquiry Report is based only on conjectures and surmises. The Enquiry Report proceeds on the basis of various personal opinions and beliefs of the DA.

(d) The Designated Authority's allegation that the Noticee ought to have specimen signatures for each and every folio under its custody imposes an impossible obligation on RTAs. In paragraphs 9-11 of the Enquiry Report, the Designated Authority has observed that: (i) specimen signatures were not available with the Noticee for 100% of the folios it was responsible for and (ii) the Noticee had an obligation to maintain specimen signatures purportedly under Regulation 14(3)(c) of the RTA Regulations. The DA has also opined that the Noticee was attempting to wash its hands of its obligations and ought to have taken extra efforts. The Noticee submits that the above observations and allegations are misconceived, baseless and seek

to impose an impossible obligation upon the Noticee, for the following reasons.

(e) The issue of non-availability of specimen signatures is not new and must be appreciated in its historical context. Prior to the establishment of SEBI and the promulgation of the 1994 Circular, there was no statutory requirement for maintaining specimen signatures for every shareholder. That being so, existing listed entities did not have complete and exhaustive records of specimen signatures for each and every shareholder.

(f) Further, the issue of non-availability of signatures remains an industry wide problem and occasioned primarily on account of the client company's inability to provide specimen signatures for their shareholders. In this regard, the issue of maintaining specimen signature records is completely different from procurement of specimen signatures when those are not available with the relevant company. The former is a specific obligation; however, the share transfer agent ought not to be held responsible for the latter.

(g) Despite multiple efforts, listed entities, STAs and even SEBI have found it extremely difficult to bridge this gap in the available records for the last three decades.

(h) The SCN observes that Noticee should send objection memos to its client companies in case of specimen signatures not being available for a particular folio. However, the Noticee submits that there was no such requirement

under the applicable regulations then and therefore, it cannot be held liable for not sending out such objection memos.

(i) Further, on its own, Noticee has made all possible endeavours in order to ensure that it maintains the record of specimen signatures for the folios that it is responsible for. In this regard, the Noticee has taken following steps. It has duly maintained all signature records as provided by listed entities or erstwhile RTAs to it and has not changed or modified the same. Noticee has also ensured that specimen signatures for all new folios generated in each database for ongoing share transfers and any other transactions are duly recorded and maintained. It has also taken the extra efforts of informing its client companies to take initiative in respect of all physical folios where the signature records are incomplete by sending an intimation to registered shareholders for updating the signature database. It has also carried out digitization of record and signatures from time to time since 2010, although digitization was not a mandatory requirement. Noticee has taken steps to ensure that digitizing the records help in streamlining the transfer process significantly and tide over the problems faced on account of non-availability of specimen signatures. Noticee is also fully compliant with the guidelines issued by the SEBI with respect to maintaining documents received by STAs from client companies in 2015.

(j) Prior to the inspection of 2015-16 (which is the subject-matter of the present SCN), in the inspection conducted between 2012-13, SEBI had noted that

Noticee had already taken steps for improvement in the area of non-availability of specimen signatures.

(k) However, the inability to bridge the gap of missing specimen signatures is not a result of Noticee or the RTA industry's lack of efforts. On the contrary, it is a consequence of the impossible task of receiving adequate responses from individual investors. It must be noted that, by way of its Circular No. SEBI/HO/MIRSB/DOP1/CIR/P/2018/73, dated 20 April 2018, SEBI mandated listed entities through their RTAs to take special efforts to take copy of PAN and Bank Account details of all security holders holding securities in physical form. On behalf of its client companies, as part of this initiative, Noticee undertook a massive exercise and also undertook additional efforts to ensure collection of specimen signatures along with collection of PAN and Bank Account details in compliance with this Circular. In this regard, Noticee addressed more than 19,75,000 letters by Speed Post and by Registered Post and a further 39,00,000 letters by courier / ordinary post as first and second reminders on behalf of its client companies. Despite these massive efforts, the Noticee received responses from over 1,63,000 investors, i.e. approximately 8% response rate. Further, it only received signature specimens from over 62000 investors, i.e., approximately 3% response rate.

(l) In light of the above, the Noticee's efforts to comply with the requirements to maintain a record of signatures cannot be questioned or alleged to be

insufficient. The law can never impose upon a person an obligation that is impossible to perform. Further, one can never be punished for failing to do the impossible. The above facts unequivocally demonstrate that the existing gap in the record of specimen signatures is not due to a lack of due diligence or of a failure to apply efforts but is because of the scale of an industry-wide legacy problem that even pre-dates SEBI.

(m) The Designated Authority has misallocated the burden of compliance and failed to appreciate the principal – agent relationship between listed entities and STAs. In the Enquiry Report, the DA notes that SEBI itself had issued letters to listed entities and advised them to take urgent steps to make specimen signatures available. Admittedly, listed entities have failed to bridge the gap with respect to the record of specimen signatures. However, till date, SEBI appears to have taken no steps whatsoever against listed entities for their purported failure. In such circumstances, the Noticee submits that SEBI cannot and ought not to penalize RTAs for the following reasons. RTAs are only the agents of their client companies. The Agreement between STAs and client companies envisages outsourcing of the client companies' obligations to maintain records of their shareholders and process transfers etc. to the STAs. That being so, it can never be that the STAs are subject to obligations and expectations that are higher than those imposed on the client companies themselves. In any case, unlike SEBI, RTA's/STA/s do not have any enforcing powers on listed companies. Further, if at the time

of hand over of records to the STA by the client company, specimen signatures are not available for all folio holders, then the breach (if at all) has already occurred, and it is the client company that is responsible for the same. Under no circumstances, can the RTA be held liable for the original sin committed by the listed entities. Further, it must also be appreciated that RTAs do not have investigative or coercive powers against their client companies. At best, RTAs can request their client companies to take steps in order to bridge the gap in specimen signatures. They cannot *suo motu* address correspondence to shareholders without the consent and approval of their client companies. In fact, the RTA Regulations do not impose any positive obligation on RTAs to bridge the gap in the record of specimen signatures that has been created as a result of the default (if at all) by listed entities. Thus, given that SEBI has not taken any action against listed entities for the purported failure to maintain records of specimen signatures, it cannot and ought not to penalize RTAs for the same purported failure.

(n) SEBI seeks to punish STAs for the absence of 100% specimen signature records, despite various recommendations made by the Registrars Association of India (RAIN) to resolve the problem are still pending. RAIN had brought this issue to the attention of SEBI vide its letter dated 11 March 2014 and has highlighted the difficulty in the process of signature verification posed due to old specimen signature recorded/missing signatures in RTA data base and consequent high rejection volume. Further, despite multiple

requests, SEBI has not allowed RTAs access to alternate avenues like KYC database which contains sufficient essential information required to verify the genuineness of investor transfer requests.

(o) The DA has observed that in the event of absence of specimen signatures at the time of processing transfer requests, the Noticee ought to have followed the procedure prescribed in the 2001 Circular with respect to "*material signature difference*" by issuing objection memos and that this purported failure was also a violation of the duty to exercise due care and diligence as enshrined in Clause 3 of the Code of Conduct for RTAs. The Noticee submits that this interpretation of the said 2001 Circular and the Code of Conduct is based on an incorrect interpretation of the law as it existed prior to 2015 and is contrary to SEBI's own contemporaneous understanding of the obligations. At the outset, it must be noted that nowhere in the 2001 Circular, is it even suggested that the procedure to be followed in the case of "*material signature difference*" and "*absence of record of specimen signatures*" is the same. A bare perusal of the said 2001 Circular clarifies that there is absolutely no link drawn between "*material signature difference*" and "*absence of record of specimen signatures*". In fact, this interpretation is confirmed by SEBI's own contemporaneous conduct from 2001 to 2014 during which period SEBI has never pointed out in any of its inspections that RTAs failed to follow the "*material signature difference*" protocol in cases of absence of specimen signatures. Such requirement has

been introduced for the first time vide Regulation 40(7) read with Schedule VII of the LODR Regulations 2015.

(p) The Noticee had no reason to believe that the protocol for *"material signature difference"* was identical with the protocol for absence of specimen signatures. It is settled law that the duty of due diligence is that of a reasonable man. It does not impose an obligation to do that which is unforeseeable. Pertinently, the exercise of due diligence by Noticee (even assuming that it did not have access to the specimen signatures) is confirmed by the following:

- Each and every share transfer request was approved by the committees of the client companies.

- In many cases, the transfer requests were regarding intra-family transfers and the transferor, transferee shared the same address.

- There have been no complaints or grievances raised by any of the investors with respect to the above transfers.

(q) Further, the Noticee never intentionally or deliberately failed to follow the 2001 Circular and has always acted with due diligence. This is demonstrated by the fact that pursuant to the change in law in September 2015, it has diligently followed the requirement of issuing objection memos even in cases of absence of specimen signatures. In this regard, the Noticee has issued over 2,00,000 objection memos to investors due to

mismatch with specimen signatures / non-availability of specimen signatures from February 2015 till May 2019.

(r) The DA's observation that specimen signatures were not available for the 50 transfers in Bharat Gas Ltd. and the transfers were processed without specimen signatures is factually incorrect. Further, the DA's observation that the Noticee sought to mislead the SEBI inspection team is also baseless. At the outset, the Noticee submits that the allegation that no precautions or safeguards were taken by Noticee at the time of approving these transfers is wholly unfounded. It further submits that specimen signatures were not scanned at the time of verifying the share transfer documents, as alleged. During the inspection, the wrong file was handed over to the SEBI officials by error. However, immediately upon discovering the error of its officers, the Noticee admitted to the same and informed SEBI that the list of specimen signatures provided to the Inspection Team was incorrect. This demonstrates Noticee's bona-fides. The documents shared later with SEBI were indeed the signature records which were available with the Noticee. The signatures which were provided to SEBI later were those which were available with the Noticee either in the re-materialization requests submitted by the same shareholders or records of earlier transfers in favour of these shareholders which contained their signatures or past correspondence or signatures on PAN card/available in the data base of the Noticee. Further, inspections

are carried out in a very short period of time wherein multiple demands for information are raised. It is not inconceivable that officers / employees can make inadvertent errors. This is human nature. The Noticee submits that *mala fides* or the intent to mislead cannot be presumed, as is sought to be done by the DA.

(s) By way of its Reply dated 30 October 2015, the Noticee immediately forwarded the correct list of specimen signatures to the SEBI inspection team. It must be noted that this list of specimens was and is available in Noticee's database and has been prepared by cross-referencing signatures that may be available for the same investor (recognized by their PAN Card) and their holdings in other client companies of the Noticee.

(t) The quantum (in terms of number of shares and value) of the aforesaid transfers are quite low which is around Rs. 1.08 Lakhs as per the consideration in the transfer deed for all the 50 Transfers put together and that there is no instance where these transfers have been challenged before any forum. Further, there is no fraudulent element in the aforesaid transfers; nor has that been the allegation to the effect in the SCN.

(u) The DA has erred in drawing the inference that since the specimen signature and the signature in the database are similar, they are actually from the same document i.e. the transfer form. In fact, it is only natural that two signatures from the same person are similar. The similarity cannot become a ground to allege an attempt to mislead the inspection team but

in fact, proves that the transfer requests were processed after adequate verification of signatures.

(v) The Noticee has provided a summary and details for each of the said 50 transfers in the form of a table in its reply to SEBI. In the said table, entry numbers 1-40 are family transfers. Entry numbers 1-22 pertain to transfer requests where signatures were available in remat requests which were received one month prior to the receipt of the transfer deed. In entry numbers 23-24, the specimen signatures were available in the Noticee's system itself. Entry numbers 25-29 pertain to cases where signatures available in previous transfer deeds received by the Noticee where the current transferor was the transferee. The entry numbers 30-50 pertain to cases where signatures were available from the PAN card of the transferor and transferee, or from the depositories system. The total number of shares processed by the Noticee under the aforementioned 50 transfers is 2637, while the total value of the transfers amounted to INR 1,08,518.

(w) The Noticee submits that there has been no violation whatsoever of Clause 1 of the Code of Conduct for RTAs. The Noticee has always acted diligently, in good faith and with the intention to comply with the spirit of the rules, regulations and circulars of SEBI. The Noticee has not attempted to intentionally mislead SEBI or its officers in any manner or form.

(x) Without prejudice to the aforesaid, in any event, assuming but not conceding that the Noticee has violated the provisions of the SEBI Regulations and Circulars as alleged in the Enquiry Report, the Noticee submits that the punishment of six months' bar on "*taking new assignments*" as recommended by the DA is harsh, disproportionate, unnecessary and counter-productive for the following reasons. The recommended punishment fails to take into account the subsequent conduct of the Noticee which clearly demonstrates that it has already taken steps to improve the internal processes and rectify any purported breaches which is borne out from the following:

- Noticee has taken every possible effort in order to bridge the gap in the record of specimen signatures. Further, it has also undertaken a massive exercise which involved issuance of 50,00,000 letters to investors to call for missing records. It has also suggested alternative sources of information to verify transfer requests.
- Noticee has also implemented the new requirement of issuing objection memos in case of absence of specimen signatures. It has issued over 2,00,000 objection memos for "*material signature difference*" and absence of specimen signatures in four years from February 2015 to May 2019.

- Even SEBI has impliedly recognized Noticee's efforts. Subsequent inspections and audits conducted by SEBI have not raised any issue with respect to absence of specimen signatures or processing of transfer requests in cases of missing specimen signatures without following the due process of law.

(y) The recommended punishment fails to take into account that the breaches (if at all) were only technical and inadvertent and did not cause any harm or loss to investors. By way of its letter dated 30 April 2019, the Noticee has clarified that there are absolutely no litigations pending with respect to any of the transfers processed for Bharat Gears Ltd. and GEI Industrial System Ltd., which forms the subject-matter of the SEBI inspection and the SCN. This demonstrates that no investor has suffered any loss whatsoever as a result of the purported breach of processing the transfer request without having record of specimen signatures. The Noticee submits that, at the time of imposing penalty, this factor is crucial. The Noticee's breaches are not intentional, completely technical and, therefore, do not deserve the extremely harsh penalty recommended by the DA.

(z) The recommended punishment will have severe adverse consequences to the securities market in a very crucial time period and ultimately harm the very investors that it seeks to protect. The Noticee is one of the biggest RTAs in India and currently serves over 1,400 listed entities comprising of approximately 3,50,00,000 individual folios. In the last 15 years, the

Noticee has also been a key player in more than 200 initial public offerings, including IPOs by public sector undertakings, such as Coal India Limited, Cochin Shipyard Limited, RITES Limited, Central Bank of India, and Punjab and Sind Bank. In recent times, the Noticee's performance has been appreciated by its client companies. If the Noticee is barred from taking up any new assignment, it will have a significant adverse impact on its clients, on the securities market and on the government's disinvestment campaign.

(aa) The Noticee is a 100% subsidiary of the Link Group, Australia which is listed on the Australian Stock Exchange. Any penalty imposed on it would have an adverse impact on the parent company and its global operations. The excessive penalty proposed to be imposed by SEBI will not only hamper the operations and goodwill of the Noticee, but also its parent company in Australia.

(bb) There have been multiple instances where SEBI has taken a lenient view while deciding upon the penalty to be imposed upon RTAs for alleged violations of regulations. The Noticee requests SEBI to take into account the same. The Noticee requests that its case be considered sympathetically and it be given a warning (if at all) and not the penalty recommended by the DA.

9. Subsequently, the Noticee vide letter dated May 19, 2021 has submitted inter alia the following:

(a) The Noticee believes that SEBI would not issue any adverse order against the Noticee in view of its submissions and given the specific facts and circumstances of the matter.

(b) Since the Securities Appellate Tribunal (SAT) is closed from May 22, to June 07, 2021, any adverse order issued by SEBI against the Noticee would constrain it from effectively exercising its statutory right to appeal in a timely manner.

(c) As on date, the Noticee is one of the largest RTAs and it continues to operate as an integral part of the Indian securities market. The Noticee currently services over 1400 listed companies comprising of at least 35,00,000 individual folios. The Noticee is also the RTA for 12 IPOs which are presently in the pipeline and for which 2,40,00,000 applications are expected.

(d) In fact, SEBI is also aware of the existing state of affairs in the capital markets and on March 05, 2021, it has written to leading merchant bankers and RTAs, including the Noticee, in relation to multiple IPOs which are in the pipeline and advised them to take all necessary steps to avoid any sort of inconvenience to investors or market intermediaries.

(e) The Noticee requests SEBI to keep in mind the above while issuing any order.

CONSIDERATION AND FINDINGS –

10. I have examined the facts of the case, the allegations against the Noticee as mentioned in the SCN / DA Report, the replies of the Noticee submitted through various letters and the legal provisions alleged to have been violated.

11. I note that the allegations against the Noticee can be summarised as follows:

(a) Non-maintenance of specimen signatures for 100% folios of its client companies, resulting in violation of Regulation 14(3)(c) of the RTA Regulations read with Instruction 2(vii) of Instructions to Registrars to an Issue / Share Transfer Agent contained in RRTI Circular: No.1 (94-95) dated October 11, 1994 under the heading 'Records to be maintained by STA'.

(b) Processing of Transfer Requests without issuing objection memo to the transferors in cases where specimen signatures of the investors were not available, resulting in violation of Point 3 of the Norms for Objection prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001.

(c) Misleading the SEBI inspection team by scanning the signatures from STF and showing them as genuine signature records, submitting two different sets of signature for the same sample, not exercising due diligence, not maintaining high standards of integrity in conduct of business and not

fulfilling its obligations in an ethical and professional manner, resulting in violation of Clause 1, 2 and 3 of the Code of Conduct prescribed for the RTAs under Regulation 13 of the RTA Regulations.

12. Now, I proceed to adjudicate the above allegations, one by one.

Non-maintenance of specimen signatures:

13. I note that Regulation 14(3)(c) of the RTA Regulations provides that every RTA shall maintain such records as may be specified by SEBI for carrying out the activities as an RTA. I further note that SEBI has issued RRTI Circular No.1 (94-95) dated October 11, 1994 containing Instructions to RTIs / STAs which the RTAs have to ensure compliance of. Instruction 2 of the said Circular provides a list of "*Records and documents to be maintained by STA*". In the said list, "*specimen signature cards and transfer deeds*" are mentioned at clause (vii). Thus, it is clear that the Noticee has a legal obligation to maintain the records of specimen signatures.

14. I note from records that in respect to the folios of 1,036 listed companies handled by Link Intime at the time of SEBI Inspection, specimen signatures were available with the Noticee only for 27.07% of the folios on an average. Specimen signatures for 100% of the folios were available in case of only 281 companies out of total 1,036 listed companies. In case of 208 listed companies, the availability of specimen signatures ranged from more than 90% to less

than 100% of the folios and in case of 302 listed companies, the availability of specimen signatures ranged from more than 50% to less than or equal to 90% of the folios. In case of the remaining 245 listed companies, availability of specimen signatures was less than or equal to 50% of the folios. Thus, I note that in case of several companies, specimen signatures for majority of the folios were not available with the Noticee.

15. I note that the Noticee has not denied the above facts and in fact has admitted that it does not have specimen signatures for all the folios of the client-companies. However, it has cited various grounds in its defence, some of which are as follows:

- The non-availability of specimen signatures is an industry-wide systemic problem which is occasioned primarily because the listed client-companies have not provided the Noticee with the specimen signatures.
- The issue of non-availability of specimen signatures is not new. Prior to the establishment of SEBI and the promulgation of the 1994 Circular, there was no statutory requirement for maintaining specimen signatures for every shareholder. That being so, existing listed entities did not have complete and exhaustive records of specimen signatures for each and every shareholder.

- The Noticee has made multiple efforts to bridge the gap and overcome the issue of non-availability of specimen signatures. However, the inability to bridge the gap of missing specimen signatures is not a result of Noticee or the RTA industry's lack of efforts. On the contrary, it is a consequence of the impossible task of receiving adequate responses from individual investors.

16. I have considered the various arguments of the Noticee, including the ones quoted above. I am of the opinion that while the Noticee may be having genuine difficulties and challenges in maintaining the specimen signatures, the fact remains that the specimen signatures of the investors are one of the most important records which are relied upon while verifying the genuineness of transfer requests and these records are to be mandatorily maintained by an RTAs. That being so, the Noticee's abovementioned failure to maintain the signature records makes the Noticee non-compliant with the provisions of Regulation 14(3)(c) read with RRTI Circular No.1 (94-95) dated October 11, 1994. However, I am inclined to consider the various submissions and constraints brought out by the Noticee as mitigating factors while deciding the appropriate action to be taken for the abovementioned violation.

Processing of transfer requests without issuing objection memos in case of non-availability of specimen signatures:

17. It is alleged that the Noticee processed 50 transfer requests pertaining to Bharat Gears Limited and 8 transfer requests pertaining to GEI Industrial Services Limited without issuing the objection memos to the transferors, even though specimen signatures were not available in such cases. As per point 3 of Norms for Objection prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001, in case of material difference in signature/s of transferor/s on Transfer Deed vis-à-vis specimen signatures recorded with the Company/ STA, the STA is required to send to the transferee an objection memo in the prescribed format in original, marking the reason as "material signature difference". Simultaneously, a copy of the objection memo is required to be sent to the transferor/s with an advice to lodge documents to facilitate the Company/STA to take on record fresh specimen signature. As per the SCN, if the above provisions have been prescribed for material difference in signature of transferor, then it follows that at least similar provisions should have been followed by the Noticee in cases of non-availability of specimen signature of transferors. By not following such procedure while processing the abovementioned transfer requests in the absence of specimen signatures, the Noticee has violated the provisions of the said Circular dated May 09, 2001.

18. In the above regard, I note that the Noticee has challenged the allegations on two counts. First of all, it has contended that contrary to the claim in SCN that it did not have specimen signatures in 50 instances of transfer requests pertaining to Bharat Gears Limited, the Noticee indeed had the signatures of the concerned investors in its records which it had retrieved from alternate sources, like past rematerialization requests submitted by the investor, old transfer deeds, PAN Cards etc. Secondly, it has contended that the requirement of issuing objection memo, similar to the cases of signature mismatch, cannot be said to be applicable to cases of non-availability of specimen signatures, as alleged. Thus, the allegations against the Noticee are baseless.

19. As regards the first contention, I note that the Noticee vide letter dated February 10, 2021 has submitted a list of the said 50 instances and has indicated the source of obtaining investors' signature which were relied upon for processing the transfer requests. From the same, I observe that in large number of cases, the source is indicated as "*Signatures were available in the remat request received by LIIPL on … …*". Further, in a number of instances, the source is indicated as "*Signatures were available in PAN Card*".

20. Having examined the above contention, I note that even assuming that the above contentions of the Noticee that it had obtained signatures from alternative sources are correct, then also the Noticeee's act of processing the

transfer forms, without issuing the objection memo to transferors, cannot be said to be proper. I note that there may be a possibility of variations in signatures of the same person in different documents. Considering the same, the Noticee's act of having processed the transfer forms on the basis of signatures obtained from sources other than specimen signature cards is not fool proof and is fraught with risks. Thus, the Noticee's contention does not seem to be based on sound footing. Further, I note that in 5 instances, the source of signature is mentioned as "old transfer deed" and in 2 instances, the source was mentioned as "transfer deed". This indicates that some of the transfer requests were processed even when these were not available from alternative sources.

21. As regards the requirement of issuing objection memo to the transferors in cases of non-availability of specimen signatures, the Noticee has contended that such requirement has been introduced only later through the provisions of LODR Regulations, 2015 and was not there earlier. In this regard, I note that the provisions of Norms for Objection prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001 cannot be said to be exhaustive in nature. It appears to me that since SEBI RRTI Circular No.1 (94-95) dated October 11, 1994 puts an obligation on an RTA to maintain the specimen signature cards, the SEBI Circular dated May 09, 2001 has not covered the eventualities where specimen signatures are not available with the RTA in the first place while processing the transfer requests. In my view, the explicit obligations put on

the RTAs under various SEBI Circulars cannot be said to be exhaustive since there may be a number of unforeseen circumstances not covered by the said Circulars. In any case, an intermediary is not expected to act in a mechanical and perfunctory way in its business and dealings. It has a duty not only to follow the explicit provisions but also to act logically and prudently in such cases for which there are no explicit provisions. What is expected from an RTA is that in the absence of explicit provisions, it should follow what appears logical and reasonable to a prudent person in such circumstances. Thus, in the instant matter where there were no signature specimen cards available with the Noticee for processing transfer requests, the most logical step for the Noticee was to issue objection memo to the transferors, so that there was no risk of any fraudulent request getting processed. The cases of non-availability of specimen signatures can be said to have a greater element of risk than the cases of material difference in signatures, covered by the 2001 Circular. If objection memos have to be compulsorily issued in the later cases, it defies logic as to why it should not be done in former cases as well. Thus, such obligation is inbuilt in the said 2001 Circular and it has to be taken that the same was present at all times since the issuance of the said Circular. Further, the Clause 3 of the Code of Conduct for RTAs also provides that an RTA shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment. Considering the same, the Noticee's contention that the obligation to issue objection memo in cases of non-

availability of specimen signatures was not present earlier cannot be accepted. Since the Noticee has failed to issue objection memo in the abovementioned cases of non-availability of specimen signatures, the allegations of violation of Point 3 of Norms for Objection prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001 and Clause 3 of the Code of Conduct for RTAs prescribed under Regulation 13 of the RTA Regulations against the Noticee stand established.

Misleading the SEBI inspection team by scanning the signatures from STF and showing them as genuine signature records

22. The Noticee is alleged to have misled the SEBI inspection team by scanning the signatures from Share Transfer Forms (STFs) and showing them as genuine signature records in respect of 50 STF pertaining to Bharat Gears Ltd. Where the specimen signatures were not available. The Noticee submitted two different sets of signatures for the same sample and failed to exercise due diligence, maintain high standards of integrity in conduct of business and fulfil its obligations in an ethical and professional manner, resulting in violation of Clause 1, 2 and 3 of the Code of Conduct prescribed for the RTAs under Regulation 13 of the RTA Regulations. I note that the Noticee has denied the said charge. However, the Noticee has admitted that it had submitted wrong signatures due to bona fide mistake, which was rectified later once the mistake was realised. Since the Noticee has admitted it to be an

error on its part and tried to correct it, I am inclined to give benefit of doubt to the Noticee.

CONCLUSION:

23. In view of the above, I find that by not maintaining the specimen signature cards as alleged in the SCN, the Noticee has violated the provisions of provisions of Regulation 14(3)(c) read with Instruction 2 contained in RRTI Circular No.1 (94-95) dated October 11, 1994. Further, since the Noticee had processed transfer requests without issuing objection memo in the aforesaid cases, the allegations of violation of Point 3 of the Norms for Objection prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001 and Clause 3 of the Code of Conduct for RTAs prescribed under Regulation 13 of the RTA Regulations against the Noticee stand established. I note that the DA has recommended debarring the Noticee from accepting any new assignment for a period of 6 months. However, the Noticee has pleaded for a lighter action on various grounds, some of which are:

(a) The Noticee has already taken corrective steps for bridging the gap in the record of specimen signatures. It has issued 50,00,000 letters to investors to call for missing records.

(b) The Noticee has implemented the new requirement of issuing objection memos in case of absence of specimen signatures.

(c) Subsequent inspections and audits by SEBI have not raised any issue with respect to absence of specimen signatures or processing of transfer requests in such cases.

(d) In many cases out of the said instances of processing of transfer requests, such requests were regarding intra-family transfers and the transferor and transferee shared the same address.

(e) The total number of shares processed by the Noticee under the aforementioned 50 transfers is 2637, while the total value of the transfers amounted to INR 1,08,518 only.

(f) There are absolutely no litigations pending with respect to any of the transfers processed for Bharat Gears Ltd and GEI Industrial Systems Ltd. which form the subject-matter of the current proceedings. No investor has suffered any loss.

24. I have considered the abovementioned grounds cited by the Noticee as mitigating factors while deciding the appropriate action against the Noticee for the abovementioned violations. Considering the same, I am inclined to issue a censure to the Noticee for the said violations instead of debarring it from taking any new assignment for six months, as recommended by the DA. Accordingly, this order is being passed under Regulation 27(5) of the Intermediaries Regulations, which substituted Regulation 28 of the Intermediaries Regulations, with effect from January 21, 2021.

ORDER –

25. In view of the above, I, in exercise of powers conferred on me under Section 19 of the SEBI Act and Regulation 27 (5) of the Intermediaries Regulations, and upon consideration of the facts and circumstances as above, hereby censure the Noticee for the abovementioned violations and warn it to be careful and compliant with applicable laws in future.

PLACE: MUMBAI **G. MAHALINGAM**

DATE: JUNE 24, 2021 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA