WTM/GM/EFD-1/DRA-II/82/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 & 11B of the Securities and Exchange Board of India Act, 1992

In the matter of complaint of Mr. Manoj Dharamdas Shah

In respect of M/s. Eicher Motors Ltd. [PAN: AAACE3882D]

Background

1. Securities and Exchange Board of India (SEBI) received a complaint dated June 28, 2015 on behalf of one Mr. Manoj Dharamdas Shah (the Complainant), who claimed to be a *bonafide* existing shareholder of Eicher Motors Limited (Eicher / Issuer Company / the Noticee), a listed company. The said complaint *inter alia* alleged that the Issuer Company and its Registrar and Share Transfer Agent (RTA), MCS Ltd. (MCS) had cheated him by changing his address and signature in their records, issuing duplicate share certificates for 100 shares of Eicher belonging to him and thereafter illegally transferring the said shares in the name of one Mr. Vijay Ratnakar Humbre. As per the complainant, he was holding the said shares since May 07, 1991 and had the original certificate with him. On submission of a request for dematerialization of the said shares on January 06, 2015, the said request was rejected by the RTA (MCS) on January 19, 2015, on the pretext that duplicate share certificate in respect of those shares had already been issued. However, the Complainant had never applied for duplicate share certificate.

2. SEBI conducted a preliminary examination in the matter. As per MCS, during March 2007, it had received a request in the name of Manoj D. Shah for change of address as well as signature. Subsequently, another request for duplicate share certificate along with various documents (i.e. copy of FIR, letter of indemnity and Affidavit) was received during September 2007 in which signatures of Mr. Manoj D. Shah were tallying with the specimen signature in the records of MCS. The said documents were processed by MCS and the same were sent to Eicher Motor Ltd. for approval. On receipt of approval, duplicate share certificate was issued to Manoj D. Shah on October 27, 2007 and dispatched to his address. On receipt of duplicate share certificate, Manoj D. Shah had transferred the same to one Mr. Vijay R Humbre on December 04, 2007, who later dematerialized the same.

3. During the course of examination, SEBI observed *inter alia* the following:

   (a) Eicher or MCS could not produce any document pertaining to the request for change of signature and address of Manoj D. Shah, purportedly received in March 2007, or any communication sent to him to verify the old as well as the new address and they claimed that the same were untraceable till date.

   (b) In the documents obtained by MCS for issuing duplicate share certificate, the name of the shareholder had been mentioned as Manoj Dayalal Shah, whereas the name of the complainant / actual shareholder was Manoj Dharamdas Shah. Further, the said documents mentioned Manoj D. Shah's father's name as "Dayalal Shah" whereas in the permanent records of Eicher, the same was captured as "Dharamdas Shah". MCS submitted that the Complainant's name was recorded as Mr. Manoj D. Shah and it had presumed that "D" stood for "Dayalal" in the Complainant's name.

(c) Duplicate Share Certificate request was approved by Eicher Motors Ltd. in the meeting of Shares Committee on October 27, 2007. Eicher and MCS submitted that while issuing duplicate share certificate, the name of the shareholder, address, FIR, notarization etc. were relied upon in good faith. Further, Mr. Manhar Kapoor, the Chief Compliance Officer of the Noticee, vide his statement recorded on 28.09.2015 had admitted that there was an error in not comparing the father's name.

(d) Clause 23 of General Norms for Processing of Documents as prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001, requires "issue of advertisement in widely circulated newspaper when value of shares is greater than ₹10,000". However, in this case, Eicher has admitted that no notice was published in any newspaper informing general public about loss of original share certificate, even though the value of shares exceeded Rs.10.000.

(e) Further, as per Circular no. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015), where the investor has complained about issuing of duplicate share certificate(s) by the company on the basis of allegedly forged /stolen documents furnished by a third party, the company shall verify and satisfy itself of the claim of the investor, within 15 days of receipt of the claim and take steps including invoking of indemnity bond to issue shares and corresponding benefits to the rightful owner in terms of section 84 of the Companies Act read with Rule 3 of the Companies (Issue of Share Certificates) Rules, 1960. However, except for filing a criminal complaint in the matter, Eicher had not done anything to satisfy itself of the claim of the complainant in the matter and had not invoked the indemnity bond to issue shares and corresponding benefits to the rightful owner.

4. Based on the abovementioned observations, it appeared to SEBI that Eicher had failed to follow proper procedures and carry out due diligence while issuing duplicate share certificate, causing a loss to the complainant. In view of the same, SEBI issued an Order dated October 27, 2016 directing Eicher to immediately reinstate the disputed shares to the Complainant in lieu of proper indemnity of the Complainant and submit an order compliance report within one month from the date of the order.

5. Subsequently, Eicher preferred an appeal against the SEBI Order dated October 27, 2016 before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT vide its order dated February 02, 2017 had set aside the said order of SEBI on the ground that the impugned order was an ex-parte order passed without hearing the appellant. Consequently, the Hon'ble SAT directed SEBI to pass a fresh order on merits and in accordance with law. Accordingly, SEBI issued a show cause notice (SCN) dated April 04, 2018 calling upon the Noticee to show cause as to why appropriate directions under Section 11B of the SEBI Act, 1992 (SEBI Act) should not be issued against it for the aforesaid violations.

6. In the SCN, apart from the observations mentioned under para 3 above, SEBI had further alleged *inter alia* the following:

   (a) Pursuant to some newspaper reports, a specific purpose inspection of MCS was conducted by SEBI on May 12, 2014 to ascertain the instances of dematerialization and selling of shares of dormant accounts using forged documents which revealed that MCS had acted as the RTA for Eicher during the period from 2005 to 2015. During the said period, it had entertained a total of 22 requests for issuance of duplicate shares, illegal transfer and dematerialization of shares, out of which 6 requests were for issuance of duplicate shares which had a cumulative value of Rs. 95,20,000/-. The inspection also revealed that signature records were not

available with MCS and nor were any advertisements issued in any widely circulated newspaper with regard to the abovementioned requests. Brief details of the 6 requests is given below:

S.No.	Name of Investor	No of shares	Folio No.	Date of Receipt of Complete Duplicate Request by MCS Ltd	Closing Price on NSE as on Receipt Date	Value of Shares (Rs)
1	Satya Paul Seigel	500	00039152	27.11.2012	2612.6	13,06,300
2	Joseph John V	500	00032255	19.01.2013	2712.25	13,56,125
3	Zuhara Salami	500	00058538	28.01.2013	2640.10	13,20,050
4	G Radhika	500	00052838	24.01.2013	2699.55	13,49,775
5	Manohar Shivanagi	500	00063099	08.12.2012	2690.15	13,45,075
6	Kavita R Mehta	500	00056934	20.11.2012	2355.20	11,77,600

(b) The indemnity/ FIR/ affidavit copy obtained while processing the request for issuance of duplicate shares of Manoj D Shah were not proper and MCS had processed the request while Eicher had approved the issuance of duplicate shares without receipt of proper indemnity. Further, Eicher had not issued new certificate for the lost certificate within six weeks of notification of loss, as required under the provisions of Clause 3 (e) of Listing Agreement.

7. It was thus alleged in the SCN that the Noticee had violated the provisions of Clause 23 of General Norms for Processing of Documents as prescribed under

RTI Circular no. 1 (2000-2001) dated May 09, 2001, SEBI Circular SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015) and Clause 3 (e) of Listing Agreement.

Reply and personal hearing:

8. The SCN was duly served on the Noticee. However, the Noticee did not file any reply to the SCN. An opportunity of personal hearing was granted to the Noticee on December 23, 2020 which was attended by the Noticee's authorized representative through video conferencing. During the personal hearing, the Noticee made oral submissions which it undertook to submit in writing by January 15, 2021. Subsequently, the Noticee vide letter dated January 12, 2021 submitted its reply to the SCN.

9. The Noticee vide letter dated January 12, 2021 has submitted *inter alia* the following:

   (a) SEBI has already issued a notice dated March 09, 2017 to the Noticee under adjudication proceedings alleging same violation of the provisions of Clause 23 of the General norms for processing of documents as prescribed under RTI Circular No. 1 (2000-2001) dated May 09, 2001. The Noticee has already filed a detailed reply, additional reply and written submissions in respect of the same.

   (b) The SCN in this matter has been issued to the Company on a purported complaint by one Mr. Manoj Dharamdas Shah regarding his shareholding in the Company. However, the Complainant has withdrawn his complaint against the Company and has issued a no objection certificate in this regard. Thus, the SCN has become infructuous and is liable to be withdrawn.

   (c) It is well settled that a SEBI registered STA, nominated by a company in accordance with the SEBI guidelines, acts as an interface between

the company and its shareholders and the STA is responsible and accountable for undertaking the entire process of transfer or transmission of shares and related or ancillary activities. The STA acts independently of the company and strictly in accordance with the guidelines issued by SEBI on the matter and the company has almost no role in the process of transfer of shares and related activities. The relationship between the company and STA is statutory in nature in as even the contract between these two entities is prescribed by SEBI.

(d) The expression “Company / STA”, used in various SEBI Circulars, do not provide for over lapping of activities and the symbol *"/"* has been cautiously incorporated to mean 'either of the RTA or the Company' and can in no manner be construed to mean 'both RTA and Company' or the company 'exclusively'. SEBI has proceeded in a prejudiced manner as if the Company had been exclusively or jointly with RTA, responsible for the same. There have been numerous judicial precedents contradicting this theory. The term `RTA/Company' has been inducted in the said circular as a well-thought-out term to prosecute the RTA or the Company 'as the case may be' and not otherwise. In all cases, the STAs have been held responsible for violation of SEBI circulars and guidelines relating to the share transfer work and not the companies for whom they are appointed. In this regard, it is relevant to refer to the SEBI order dated 29.06.2015 in the matter of 'Knack Corporate Services Private Limited' and the order of the Hon’ble SAT in the case of ‘Parsoli Corporation Ltd. vs. SEBI’ (Appeal No.146 of 2010 dated 12.08.2011).

(e) As regards the enquiries and investigation proceedings carried out earlier by SEBI about the affairs of MCS, as referred to in the SCN, these have not been elaborated in the SCN. Further, the Noticee cannot be made vicariously liable for the defaults of STA when the provisions of SEBI (Registrar to an Issue and Share Transfer Agents)

Regulations, 1993 (RTA Regulations) specifically provide for liability of a STA in case of its default.

(f) The RTA cannot be considered as an agent of the Company. In a Principal-Agent relationship, the element of *"control"* is sine-qua-non and prerequisite. However, the same is missing in the company-RTA relationship since a company's power to select an RTA and exercise control over its the day-to-day affairs is restricted and is not absolute. A company can appoint an STA only from panel of STAs approved by and registered with SEBI. SEBI's panel of STA's is prepared after fulfilling a strict criterion of fit and proper person. Further, as per the SEBI guidelines, a STA has to be an independent person and has to work as per the processes and procedures prescribed by SEBI from time to time. An issuer/company can never interfere in the procedures prescribed by SEBI for share related work carried by a STA. Furthermore, the STA after carrying out due diligence on shares related work gives final output to the company with its recommendations, which the Company/ its share transfer committee follows. In these circumstances, it would not be appropriate to hold STA an agent of the Company. The agreement specifying the relationship between the Company and STA, the roles and responsibilities of both the parties is also prescribed and governed by SEBI, with no choice with Company to modify it. This agreement is not in the nature of contract of service, but it is more of contract for service, where the agent is supposed to work independently.

(g) As regards the submissions made by Mr. Manhar Kapoor, Company Secretary of the Noticee, before SEBI on 28.09.2015, these submissions were purely factual in nature and he never admitted that the error was on part of the company. Since it was the responsibility of MCS, he merely pointed out that the name may not have been carefully checked by MCS. The SCN itself records the admission of

MCS that it had presumed that the letter “D” in the complainant’s name Manoj D. Shah stood for “Dayalal”.

(h) In the documents pertaining to independent investigation by SEBI of the working of the MCS, shared by SEBI with the Noticee vide its letter dated October 30, 2017, SEBI has solely implicated MCS for the lapses pertaining to issuance of newspaper advertisements in respect of several instances of issuance of duplicate share certificates and has observed that the RTA had kept the Company completely in the dark with regard to the non-issue of the advertisement and that there was nothing on record to show that the Company had ever instructed the RTA not to follow the requirement of issue of advertisements. Further, as regards the case of Manoj D. Shah, SEBI has observed that STA had failed to verify the full name of the shareholder, perform proper due diligence and ensure indemnity / affidavit / FIR copy were proper before processing the request for issue of duplicate share certificate.

(i) Section 2(60)(vii) of the Companies Act, 2013 provides that in respect of issue or transfer of any shares of a company, the term *"officer who is in default"* would mean “*the share transfer agents, registrars and merchant bankers to the issue or transfer*.” Therefore, in the present case, the STA is liable exclusively for the violations found by SEBI.

(j) As per Regulation 53A of SEBI (Depositories and Participants) Regulations, 1996 and SEBI circular No. D&CC/FITTC/CIR-15/2002 dated December 27, 2002, a Company has to mandatorily appoint common agency (Registrar cum Share Transfer Agent or RTA). Therefore, there was no scope for company to carry out transfer related activities in-house and accordingly STA was appointed as share transfer agents for both physical shares as well as shares in demat mode. An RTA is registered with SEBI under RTA Regulations which provide for a comprehensive regulatory regime for prior registration of eligible fit and proper entities to act as RTAs and subsequent checks and

controls to ensure compliance with applicable statutory provisions. Further, Regulation 9A of the RTA Regulations provide for execution of an agreement between the company and STA allocating the duties and responsibilities between the STA and the company. SEBI has also issued RRTI Circular: No.1 (94-95), dated 11-10-1994 which *inter-alia* provides for draft of an agreement to be mandatorily executed between the company and the STA. The draft has been formulated by SEBI with a view to bring about standardisation in the legal relationship between the STA and the company. The role, responsibility and obligations are clearly pre-defined and demarcated, rather, the statutory guidelines stated above mandate that the share transfer related work is exclusively handled by STA. The records related to share transfer related work are maintained by STA. The said agreement stipulates that after verification of valid transfers, the transfer agent shall prepare transfer register in duplicate and submit the transfer register to the company for approval and the company has to conduct meetings to approve the transfers so that the entire process gets completed within stipulated time. Post approval from the company, the STA has to handle endorsement and dispatch of transferred certificates.

(k) SEBI Circular no. 1 (2000-2001) dated May 09, 2001 which provides for uniform procedures or practices adopted by companies and their registrars to issue/share transfer agents for handling and processing of transfer documents etc., had envisaged its applicability on the listed companies which were involved in in-house processing of share transfers and related work. At the same time, SEBI was mindful of the fact that some listed entities had by then outsourced the transfer related work to third party. Therefore, while detailing the norms for processing of documents and share transfers, the circular has deliberately used the phrase 'Company / STA' signifying company or transfer agent, as the case may be. In the event any company is carrying out the stipulated work in-house, these norms

for processing have to be followed by the company but in case it has appointed transfer agent, the norms are to be followed by such transfer agent. The above interpretation also finds support from the fact that SEBI has on earlier occasions held the transfer agents to be exclusively responsible for compliance with the above circular in respect of share transfer related work for their client companies. In this regard, the Regulation 7 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) and the definition of Share Transfer Agent in regulation 2(g) of RTA Regulations may also be referred to.

(l) The SCN issued by SEBI to the Company is entirely based on complaint by Mr. Manoj Dharamdas Shah. In other cases, mentioned in the SCN, STA of the Company had all the documents based on which duplicate shares were issued and no complaint was received from any of the investors. Out of the six cases mentioned in the SCN, signature records of five shareholders (in signature software) were handed over by MCS to new STA, M/s Link Intime India Pvt. Ltd. in September, 2015. Regarding the remaining records, Link Intime India Pvt. Ltd. has been rigorously following up with MCS but is yet to receive any response from them.

(m) As regards the change of signature and address of Manoj D. Shah in March 2007, STA had scrutinized the documents and upon its satisfaction, had updated the new address and signature of Manoj Dharamdas Shah in its records on March 24, 2007. The Company does not have or maintain any records concerning the requests for change in signature and/or address. In this case also, requests were made to the STA. Further, under Clause 5 and Clause 9 of the Memorandum of Understanding between the STA and the Company (which was in absolute conformity with draft prescribed by SEBI), the STA had been solely vested with this responsibility of carrying out the work relating to share transfer and maintaining shareholders' records. Further, the

Company understands that erstwhile STA (MCS) did not have this record and never handed over these records to new STA M/s Link Intime India Pvt. Ltd. appointed with effect from 08-10-2015.

(n) As regards the issuance of duplicate share certificate, MCS in its email dated July 15, 2015 has admitted that the documents for issuance of duplicate share certificate as received from the alleged impersonator were scrutinized and processed by the STA and upon being satisfied with the submissions, the STA, forwarded the details of the approved case to the Company for necessary formalities of passing a resolution by Committee of Directors and signing of the duplicate share certificate. The signed duplicate share certificate bearing number 120903 and folio number 48656 was thereafter returned to the STA for appropriate action. Further, from MCS's email dated July 22, 2015 referred to in the SCN, it is evident that the case of Manoj D. Shah was processed entirely by MCS and post processing, the approval from the company was sought. It is obligatory upon the company to accord such approval so as to ensure compliance with statutory provisions.

(o) On July 15, 2015, Manoj D. Shah filed a complaint against the Noticee and MCS on the SCORES Platform of SEBI claiming fraudulent transfer of shares. In view of the purported fraud/forgery, the Company filed a complaint with the SHO, Saket Police Station, New Delhi against the alleged impersonator and Mr. Vijay R Humbre for committing the offences of cheating, theft, forgery, fabrication and impersonation. In view of the police complaint, SEBI had disposed of the SCORES Complaint filed by Mr. Manoj Dharamdas Shah. Subsequently, the Company filed a fresh complaint with the Senior Inspector of Police, Dindoshi Police Station at Mumbai on February 25, 2016 since the transaction had happened at Mumbai. The investigation in the matter is still going on by the police authorities. On October 4, 2016, Mr. Manoj Dharamdas Shah filed a second complaint on SCORES platform asking for redressal of the issue. This complaint was again disposed-

off by SEBI on November 3, 2016 by stating that "*case is under investigation by Dindoshi Police Station, Mumbai Police. In view of the same, your matter stands closed*." Despite no complaint pending before the SEBI, on November 2, 2016, the Company received an order passed by SEBI, directing the Company to immediately reinstate the Disputed Shares to the Mr. Manoj Dharamdas Shah in lieu of a proper indemnity from him. The said order was without any knowledge of any proceedings against the Company and also the Company was not provided any opportunity of being heard or to present its case before SEBI.

(p) As per definition of STA provided under Regulation 2(g) of the RTA Regulations, an STA is required to maintain the record of shares issued by a company. Therefore, allegation that the share transfer records of investors including specimen signatures cards were maintained by the Company and were not available with MCS are not correct and without any basis.

(q) MCS was solely maintaining the share transfer related records of the Company during the period it acted as STA of the Company till September 18, 2015. It is evident from the SCN itself that the processing of all the share transfer related and ancillary work was being carried out by MCS independently. Therefore, the issuance of advertisement was also the sole responsibility of MCS. It was obligatory upon the STA and not the Company to issue necessary advertisement / publication before issuance of duplicate share certificates and any negligence by MCS in processing of documents cannot be attributed to the Company. SEBI regulations and guidelines mandate that the STA shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment in carrying out its role as STA.

(r) The allegation in the SCN that duplicate share certificate has been issued to alleged impersonator without obtaining proper indemnity is incorrect. As informed to the Noticee by MCS, it had taken indemnity and other

relevant papers from the investor and the format of indemnity was forwarded by MCS to the investor. Any obligation to obtain indemnity by the Company directly from the concerned shareholder or to issue advertisement in the newspaper could have arisen had the share transfer related work been handled in-house by the Company. It is also imperative to add that the law laid down by SEBI contemplates receipt and processing of shareholders' requests solely at the STA's end and furnishing of minimal details only by the STA to Company for its confirmation.

(s) As regards the alleged violation of the provisions of Circular SMDRP/POLICY/CIR-46/2001 DATED September 27, 2001 regarding issuance of duplicate share certificate, it may be noted that since the matter involved alleged fraud, the STA promptly responded to all the queries raised by Mr. Manoj Dharamdas Shah, including providing him the details of the documents based on which the duplicate share certificates were issued. The investor had filed complaints through SCORE platform of SEBI, which were promptly responded to by the Company. Since the investor had complained about fraud, the Company filed a police complaint to investigate the matter. Further, since the title of shares was not clear, it was not possible for the Company to issue him the duplicate share certificates within a period of 15 days.

Consideration:

10. I have examined the facts of the case, the charges against the Noticee, the documents available on record and the reply of the Noticee in respect of the charges. Before proceeding any further in this order, I note that the allegations against the Noticee can be summarised as below:

(a) In respect of six cases of issuance of duplicate share certificates observed during MCS's inspection by SEBI on May 12, 2014, as referred to in the SCN, the signature records were not available with MCS.

(b) Eicher had failed to exercise due skill, care and diligence while issuing duplicate share certificate in case of Manoj D. Shah. Eicher had approved such issuance even though the shareholder's father's name was incorrectly mentioned in the FIR copy, the affidavit and the indemnity bond and the said documents were also not proper.

(c) Even though the value of shares in case of Manoj D. Shah and each of six other cases cited in the SCN exceeded Rs.10,000, no advertisement was issued in the newspaper. The same was in contravention of Clause 23 of General Norms for Processing of Documents as prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001, which requires *"issue of advertisement in widely circulated newspaper when value of shares is greater than ₹10,000"*.

(d) As per Circular no. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015), where the investor has complained about issuing of duplicate share certificate(s) by the company on the basis of allegedly forged /stolen documents furnished by a third party, the company shall verify and satisfy itself of the claim of the investor, within 15 days of receipt of the claim and take steps including invoking of indemnity bond to issue shares and corresponding benefits to the rightful owner in terms of section 84 of the Companies Act read with Rule 3 of the Companies (Issue of Share Certificates) Rules, 1960. However, except for filing a criminal complaint in the matter, Eicher had not done anything to satisfy itself of the claim of the complainant in the matter and had not invoked the indemnity bond to issue shares and corresponding benefits to the rightful owner.

(e) Eicher had not issued new share certificate to the Complainant, Manoj D. Shah, in replacement of that which was lost, within six weeks of notification

of loss, as required under the provisions of Clause 3(e) of the Listing Agreement.

11. I now proceed to deal with the abovementioned allegations, one by one.

12. As regards the charges regarding non-availability of signature records in respect of six cases of issuance of duplicate share certificates observed during MCS's inspection by SEBI on May 12, 2014, as referred to in the SCN, I note that the Noticee has submitted that out of the six cases mentioned in the SCN, signature records of five shareholders (in signature software) were handed over by MCS to new STA, M/s Link Intime India Pvt. Ltd. in September, 2015. In this regard, I further note that before passing the SEBI Order dated October 27, 2016, SEBI had accepted the explanation submitted by the Noticee in this regard and no action was proposed to be taken by SEBI. Hence, I am inclined to drop the said allegation against the Noticee.

13. As regards the allegations pertaining to failure in exercising due skill, care and diligence while approving issuance of duplicate share certificate in case of Manoj D. Shah and also failure to issue newspaper advertisements in case of Manoj D. Shah and 6 other cases referred to in the SCN, I note that Eicher has not disputed the fact that Manoj D. Shah's father's name was incorrectly mentioned in the FIR copy, the affidavit and the indemnity bond and that the said documents were not proper. It has also not denied the fact that no newspaper advertisements were issued before issuing duplicate share certificates in the abovementioned 7 cases. However, the Noticee has vehemently sought to shift the entire responsibility in this regard on its RTA, MCS Ltd. The Noticee's main contention is that when a company appoints a SEBI registered RTA in accordance with the SEBI guidelines, the said RTA acts as an interface between the company and its shareholders and is responsible and accountable for undertaking the entire process of transfer

or transmission of shares and related or ancillary activities. According to the Noticee, since it had appointed MCS, a SEBI registered RTA, it cannot be held responsible for any procedural lapses in such functions performed by the RTA.

14. The Noticee has further contended that SEBI Circular no. 1 (2000-2001) dated May 09, 2001 which provided for uniform procedures or practices adopted by companies and their registrars to issue/share transfer agents for handling and processing of transfer documents etc, had envisaged its applicability on the listed companies which were involved in in-house processing of share transfers and related work as well as on the RTAs since some listed entities had by then outsourced the transfer related work to third parties. Therefore, while detailing the norms for processing of documents and share transfers, the circular has deliberately used the phrase 'Company / STA' signifying company or transfer agent, as the case may be. In the event any company is carrying out the stipulated work in-house, these norms for processing have to be followed by the company but in case it has appointed a transfer agent, the norms are to be followed by such transfer agent.

15. I have considered the abovementioned submissions of the Noticee and have examined the provisions of the said SEBI Circular no. 1 (2000-2001) dated May 09, 2001 which prescribes general norms for processing of documents, processing of transfers and objection. I note that the said Circular at multiple places refers to the phrase “The Company/STA” while prescribing how various functions relating to processing of documents have to be discharged. However, I do not agree with the Noticee’s submission that the said phrase has been used to squarely mean “company or transfer agent, as the case may be”. In my considered view, the company, being the issuer of the securities, has the primary responsibility in respect of all issues concerning the transfer

of shares and the RTA merely acts as its agent to whom such functions can be outsourced. The said view is supported by the following points:

(a) Rule 4(3) of the Companies (Issue of Share Certificates) Rules, 1960, which was applicable at the relevant time, provided that *"No duplicate share, certificate shall be issued in lieu of those that are lost or destroyed without the prior consent of the Board or without payment of such fees, if any, not exceeding Rs. 2 and on such reasonable terms if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence as the Board thinks fit."* The said provision clearly mentions about company's responsibilities in case of issuance of duplicate shares.

(b) Further, Regulation 9A(b) of the RTA Regulations provides for execution of an agreement between the company and STA allocating the duties and responsibilities between the STA and the company. SEBI has also issued RRTI Circular: No.1 (94-95), dated 11-10-1994 which *inter-alia* provides for draft of an agreement to be mandatorily executed between the company and the STA. The said Circular notes that *"While the RTI / STA and the Issuer / body corporate may suitably modify the agreement depending upon the circumstances of each case, they should as far as possible, observe the spirit behind the various clauses contained in the model agreements. While doing so, it must also be ensured that neither party should reserve for itself any rights which would have the effect of diminishing in any way its liabilities and obligations under the Companies Act, 1956 and SEBI (Registrars to an Issue and Share Transfer Agents) Rules and Regulations, 1993."* Thus, any agreement between the Company and the RTA cannot dilute the liability and obligations of a company under the Companies Act, 1956. Further, Clause 14 of the Model Draft Agreement between the STA and the Company, as provided in Annexure B of the said Circular dated 11-10-1994 clearly indicates that *"Company is primarily responsible for the work of share transfer work assigned to STA."*

16. From the abovementioned points, it is clear that in matters pertaining to transfer of shares and issuance of duplicate share certificates, the legal provisions put the primary responsibility on the Company. It therefore logically follows that the phrase “Company/STA” used in the said SEBI Circular dated May 09, 2001 implies a joint responsibility of the issuer company and its RTA in ensuring that all due procedures are followed.

17. The Noticee has repeatedly contended that since it had appointed a SEBI registered RTA which is regulated by SEBI and is governed by the provisions of the RTA Regulations and other guidelines, it cannot be held responsible for any lapses in respect of any procedural lapses. However, I do not agree with the said proposition of the Noticee. While the provisions of RTA Regulations and various Circulars issued by SEBI regulate the functioning of an RTA, the same do not dilute the responsibility of the Company in any manner. The mere fact that an RTA is registered with and regulated by SEBI does not lessen the liabilities and obligations of a company in any manner. The Company being the principal entity in respect of issuance of shares, remains jointly responsible with the RTA for any lapse. This is more so in such cases where the procedures pertaining to transfer of shares necessarily involve both the RTA and the company. In the given case of Manoj D. Shah, the Noticee has admitted that the details pertaining to request for issuance of duplicate shares, after being processed at the RTA’s end, were forwarded to the Noticee for approval and such approval was accorded by the Shares Committee of the Company. In my view, a company has to exercise due diligence and care while considering any proposal received from its RTA, irrespective of whether RTA has given its approval or not. This exercise should not be carried out in a perfunctory manner by the Company. The fact that the Shares Committee of the Company approved the issuance of duplicate share certificate in case of Manoj D. Shah despite the apparent errors in the supporting documents (i.e. incorrect

father's) and in the absence of a newspaper advertisement shows that the Company did not exercise reasonable skill, care and diligence. Further, since it had failed to ensure the issuance of newspaper advertisements in the six other cases as mentioned in the SCN, the Noticee cannot escape the liability for contravention of Clause 23 of General Norms for Processing of Documents as prescribed under RTI Circular no. 1 (2000-2001) dated May 09, 2001.

18. The Noticee is also alleged to have violated the provisions of Circular no. SMDRP/POLICY/CIR-46/2001 dated September 27, 2001 (incorporated in Master Circular CIR/MRD/DP/9/2015 dated May 26, 2015), which provide that where the investor has complained about issuing of duplicate share certificate(s) by the company on the basis of allegedly forged /stolen documents furnished by a third party, the company shall verify and satisfy itself of the claim of the investor, within 15 days of receipt of the claim and take steps including invoking of indemnity bond to issue shares and corresponding benefits to the rightful owner. In this regard, it is alleged that except for filing a criminal complaint in the matter, Eicher had not done anything to satisfy itself of the claim of the complainant in the matter and had not invoked the indemnity bond to issue shares and corresponding benefits to the rightful owner. The Noticee is also alleged to have violated the provisions of Clause 3(e) of the Listing Agreement, which required a company to issue new share certificate to in replacement of that which was lost, within six weeks of notification of loss. Admittedly, the Company has not issued duplicate shares to the Complainant. In this regard, I note that after lodging a police complaint in the matter, the Company had not taken any concrete steps for restoration of shares and consequent benefits to the Complainant Manoj D. Shah. Thus, the allegation of violation of abovementioned provisions of SEBI Circular dated September 27, 2001 and the Listing Agreement stand established.

19. While I have taken note of the abovementioned defaults by the Noticee, I further note that the Complainant in this case has withdrawn his complaint against the

company. I note from the letter dated July 23, 2019 of Mr. Manoj D. Shah addressed to SEBI, a copy of which has been submitted by the Noticee, that he has stated therein *inter alia* the following:

> *"I had made complaints to your good office in respect of 100 shares owned by me in the Company. I wish to bring to your kind attention that now I do not hold any investment in the Company or have any other claim against the Company. Therefore, I am not inclined towards pursuing the Complaints any further. In view of the above, I hereby withdraw my complaints as I have no grievance or claim against the Company."*

20. I note that the SEBI Order dated October 27, 2016 against the Noticee was limited to directing the Noticee to immediately reinstate the disputed shares to the Complainant in lieu of proper indemnity of the Complainant and submit an order compliance report within a month. The said order did not contain any other direction against the Noticee. Since the current proceedings have been initiated pursuant to setting aside of the said order and the cause of action sought to be addressed in the said order no longer survives because of withdrawal of complaint by the Complainant, the issue of grant of any relief to the Complainant has become infructuous. Having regard to the same, I am not inclined to pursue the matter any further against the Noticee for the abovementioned defaults. However, I hereby warn the Noticee to exercise due care and caution and ensure adherence to all applicable norms in matters pertaining to issuance of duplicate shares henceforth. In view of the same, I hereby dispose of the current proceedings without any directions.

DATE: MARCH 23, 2021 **G. MAHALINGAM**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA