BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2021-22/13815]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 19-H (2) OF DEPOSITORIES ACT 1996 READ WITH RULE 5 OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

Farsight Securities Ltd. having addresses at (i) Shop No.22, Ashoka Plaza, Delhi Road, Rohtak, Haryana -124001, and (ii) 17A/55, Farsight Triveni Plaza, Gurudwara Road, Karol Bagh, New Delhi-110005

In the matter of Delta Leasing & Finance Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against Farsight Securities Ltd. (**Noticee)** for the alleged violations of clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as **"D&P Regulations, 1996"**) read with Regulation 20AA *ibid* read with Regulation 98 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as **"D&P Regulations, 2018)** and clause 1.8(vii) & 1.8(viii) of SEBI Master Circular, CIR/MRD/DP/13/2013 dated April 15, 2013 and clause 13.2 & 13.3 of SEBI Master Circular, CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* order dated December 21, 2020 to inquire into and adjudge under

Section 15HB of the SEBI Act, read with Section 19G of the Depositories Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated *vide* order dated January 13, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/ST/2021/15254 dated July 14, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') and 4(1) of the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ('Depositories Adjudication Rules') to show cause as to why an inquiry should not be held and penalty not be imposed against Noticee in terms of Section 15HB of the SEBI Act, read with Section 19 G of the Depositories Act, for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. Delta Leasing & Finance Ltd. (DLFL) was incorporated in November 1983 and was listed on DSE on June 27, 1984 and at BSE on April 18, 2013. As per the website of DLFL, the company is engaged in investments and providing loan & advances and other related activities. Address details of DLFL are as under:

Registered Office Address	55, F.I.E, Patparganj Industrial Area, New Delhi– 110092
Corporate Office Address	104, Mukund House, Azadpur, New Delhi-110033

6. An investigation was conducted into the trading activities of in the scrip of DLFL from January 1, 2013 to December 31, 2014. Examination of off market data obtained from the Depositories revealed that promoter entities transferred substantial quantity of shares to several entities during the investigation period.

7. The off market transactions executed during the investigation period were carried out electronically in dematerialized form by transfer from the account of a Beneficial Owner (Transferor or Source Client) to the account of another beneficial owner (Transferee or the Target Client) through Delivery Instruction Slips (DIS).

8. On scrutiny of the DIS of some of the Source clients, it was observed that consideration amount for the off market transfer of shares was stated in the DIS. In certain other cases, the consideration amount was indicated to have been received in cash and in some other cases, though the consideration amount was mentioned but the mode and manner of the amount received were not stated. Copy of DIS slips were provided as **Annexure-2** with SCN**.** The Source clients and the Target clients did not substantiate their claim of consideration received / paid with any documentary evidences in response to the summons issued seeking the aforementioned information. Some of the source clients or the Target clients did not substantiate their claim of consideration received / paid with any documentary evidences in response to the summons issued, seeking the aforementioned information.

9. In this connection, the role of the Depository Participants (DP) in the off market transactions through DIS was examined to ascertain as to whether the DPs

exercised their due diligence and complied with the Rules and Regulations before executing such off market transfers.

10. Code of Conduct is prescribed for a DP in Regulation 20AA under Schedule III, governing its day-to-day activities as a DP and requires that DPS act in a prompt, effective and efficient manner and maintain high standards of integrity in all its dealings.

11. Further, in terms of para 1.8(vii) of SEBI Master Circular bearing Ref. No. CIR/MRD/DP/13/2013 dated April 15, 2013, *"the DPs shall cross check with the BOs under exceptional circumstances before acting upon the DIS".* And para 1.8(viii) of the said Master Circular states that *"the authorized official of the DP verifying such transactions with the BO, shall record the details of the process, date, time, etc., of the verification on the Instruction Slip under his signature".*

12. It was observed that the Noticee executed different categories of off market transactions which are considered as transactions under exceptional circumstances whereby the DPs are required to enquire with the beneficial owners about the transactions before its execution and record the same. The table below gives summary of such transactions:

Sno.	Name of DP	Cash			Gift			Loan/Return of loan shares			Bad Deliver/Delivery return			Consideration not mentioned		
		No. of source client	No. of transactions	Qty of shares	No. of source clients	No. of transactions	Qty of shares	No. of source clients	No. of transactions	Qty of shares	No. of source clients	No. of transactions	Qty of shares	No. of source clients	No. of transactions	Qty of shares
1.	Farsight Securities Ltd.	2	9	90,250	4	16	3,08,696	10	155	30,68,458	0	0	0	4	7	80,156

13. Details of the transactions executed were given as **Annexure-3** with SCN. Further, on specific query to Noticee vide letters and summons pertaining to the extent of suo-moto due diligence exercised by them, the Noticee replied that it had exercised considerable due diligence while executing the transactions and had also obtained confirmation from the Source clients during verification of the DIS. However, the Noticee did not provide any documentary evidence of any record showing the name of the BO with whom verified, the manner of verification either phone or in person, date of such verification, the phone number to which calls made etc. substantiating their contention. The following Table gives details of summon issued and summary of the reply of the Noticee.

S No.	Name of the DP	Date of Letter/Summons issued	Date of Reply	Remarks
1	Farsight Securities Ltd.	21.06.2019	13.07.2019	Confirmed exercise of due diligence but not substantiated with documentary evidence such as cross verification with the source client and recording of the same

14. Further, on verification with depositories, as to whether any alerts were generated in their system about the aforesaid transactions and if so whether the same had been conveyed to the Noticees, the depositories had provided the details of alerts sent to them and on examination of the same, it was seen that the Depositories had sent alerts in respect of many of the aforesaid transactions to the Noticee, the details of which are as under:

Sr no.	Name of DP	No. of clients	No. of transactions	Alerts Received from NSDL	Alerts Received from CDSL
1	FARSIGHT SECURITIES LTD.	14	181	125	Nil

15. While a sample of few of such alerts are provided below, the remaining instances were provided in **Annexure-4** of the SCN:

DP ID	DP Name	Client ID	First Holder Name	First Holder PAN	Qty	Execution Date	Category of Exceptional Transaction
IN301766	Farsight Securities Limited	10114533	Anuradha devi	AJCPA8040P	22500	28.03.2014	Loan/Return of loan shares
IN301766	Farsight Securities Limited	10113199	Sunil singh	BDGPS0774K	72800	25.10.2013	Loan/Return of loan shares
IN301766	Farsight Securities Limited	10114525	Uma shankar	BFKPS1089H	41000	28.03.2014	Loan/Return of loan shares

16. On specific queries to the Noticee regarding the nature of action taken on the alerts provided by the Depositories, the Noticee had uniformly informed that the alerts were examined and as no suspicion or concerns was seen, the alerts had been closed.

17. Further, Noticee had executed transfers involving settlement in Cash of huge amounts, the details of which are as under:

Name, PAN, Demat Id of source client (1)	Name, PAN, Demat Id of target client (2)	Quantity transferred (3)	Consideration (Rs.) received by source client (4)	Market rate (5)	Market value (Rs.) (6)	Date of payment by target client (7)	Date of transfer of shares by source client (8)	No. of days of delay (9)
NATRAJ CAPITAL & CREDIT PVT LTD 00001943	AJEET SINGH CHAUHAN 10903373	18750	Not Mentioned	90.50	1696875	15.03.2010	22.03.2014	1467
	DINESH KUMAR 11715795	11000	Not Mentioned	90.50	995500	15.03.2010	22.03.2014	1467
	VANDNA CHAUHAN 10373950	11000	Not Mentioned	90.50	995500	15.03.2010	22.03.2014	1467
	NAVNEET PAREEK 00010738	13000	Not Mentioned	195	2535000	10.12.2012	13.06.2014	549
SUNIL SINGH 10113199	KRISHANU MUKHARJI 00331614	3000	Not Mentioned	203	609000	02.04.2013	16.06.2014	439
	KRISHANU MUKHARJI 00331614	3000	Not Mentioned	203	609000	02.04.2013	16.06.2014	439
	MOHIT BEHAL 10184950	8000	Not Mentioned	245	1960000	09.04.2013	24.06.2014	440

	MOHIT BEHAL 10184950	6000	Not Mentioned	260	1560000	09.04.2013	26.06.2014	442
	TILAK RAJ BEHAL 10186548	16500	Not Mentioned	192	3168000	05.04.2013	07.07.2014	457

18. The reason for the transactions as mentioned in the above Table is not mentioned as “cash” by the Source Clients in the DIS. However it was seen that the market value of the transactions is quite huge running into several lacs. Further, it was observed that the consideration amount is not mentioned in the DIS which is a case of exceptional circumstance for which the DP should have ascertained the reasons in order to determine whether such transactions are genuine transactions serving some economic purpose and not a suspicious transaction which need to be reported as CTR & STR to FIU as part of due diligence of the DP. Even when alerts were received, the matter was treated as routine and the alerts were closed. However, upon Investigation, it came to light that it was actually a cash transaction as stated by the Target clients to Source Client Sunil Singh and to this extent, there was a lack of exercise of due diligence on the part of DP.

19. It was therefore alleged that the Noticee had failed to exercise due diligence in executing off market transactions settled in cash exceeding the ceiling of Rs. Twenty thousand prescribed in Income Tax Act and failing to report such transactions to FIU through CTR as stipulated in paras 13.2 and 13.3 of SEBI Master circular on AML dated December 31, 2010.

20. In view of the above, Noticee was alleged to have violated clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of D&P Regulations, 1996 read with Regulation 20AA read with Regulation 98 of D&P Regulations, 2018, ; and

clause 1.8(vii) & 1.8 (viii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013; and clause 13.2 & 13.3 of SEBI Master Circular CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010.

21. The relevant clauses of D&P Regulations, 1996 & 2018, SEBI Master Circulars dated December 31, 2010 and April 15, 2013 are reproduced as under:

D&P Regulations, 1996:-

THIRD SCHEDULE

CODE OF CONDUCT FOR PARTICIPANTS

1*. A participant shall make all efforts to protect the interests of investors.*

2*. A participant shall always endeavor to—*

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

3. *A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.*

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

11*. A participant shall maintain the required level of knowledge and competency and abide by the provisions of the Act, Rules, Regulations and circulars and directions issued by the Board. The participant shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.*

Participants to abide by code of conduct.

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

D&P Regulations, 2018:-

Repeal and savings.

98*.(1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, shall stand repealed.*

(2)Notwithstanding such repeal, anything done or any action taken or purported to have been taken or contemplated under the repealed regulations before the commencement of these regulations shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of these regulations.

(3)After the repeal of the regulations referred to in sub-regulation (1), any reference thereto in any regulation, guideline, circular or direction issued by the Board shall be deemed to be a reference to the relevant provisions of these regulations.

SEBI Master Circular CIR/ISD/AML/3/2010 dated December 31, 2010*:-*

13. *Reporting to Financial Intelligence Unit-India13.1 In terms of the PML Rules, intermediaries are required to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND) at the following address:*

Director, FIU-IND,

Financial Intelligence Unit-India,

6th Floor, Hotel Samrat,Chanakyapuri,
New Delhi-110021. Website: http://fiuindia.gov.in

***13.2** Intermediaries shall carefully go through all the reporting requirements and formats enclosed with this circular. These requirements and formats are divided into two parts- Manual Formats and Electronic Formats. Details of these formats are given in the documents (Cash Transaction Report- version 1.0 and Suspicious Transactions Report version 1.0) which are also enclosed with this circular. These documents contain detailed directives on the compilation and manner/procedure of submission of the manual/electronic reports to FIU-IND. The related hardware and technical requirement for preparing reports in manual/electronic format, the related data files and data structures thereof are also detailed in these documents. Intermediaries, which are not in a position to immediately file electronic reports, may file manual reports with FIU-IND as per the formats prescribed. While detailed instructions for filing all types of reports are given in the instructions part of the related formats, intermediaries shall adhere to the following:*

(a) The Cash Transaction Report (CTR) (wherever applicable) for each month shall be submitted to FIU-IND by 15th of the succeeding month.

(b) The Suspicious Transaction Report (STR) shall be submitted within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transactions integrally connected are of suspicious nature. The Principal Officer shall record his reasons for treating any transaction or a series of transactions as suspicious. It shall be ensured that there is no undue delay in arriving at such a conclusion.

(c) The Principal Officer will be responsible for timely submission of CTR and STR to FIU-IND; (d) Utmost confidentiality shall be maintained in filing of CTR and STR to FIU-IND. The reports may be transmitted by speed/registered post/fax at the notified address. (e) No nil reporting needs to be made to FIU-IND in case there are no cash/suspicious transactions to be reported.

***13.3** Intermediaries shall not put any restrictions on operations in the accounts where an STR has been made. Intermediaries and their directors, officers and employees (permanent and temporary) shall be prohibited from disclosing ("tipping off") the fact that a STR or related information is being reported or provided to the FIU-IND. This prohibition on tipping off extends not only to the filing of the STR and/or related information but even before, during and after the submission of an STR. Thus, it shall be ensured that there is no tipping off to the client at any level. It is clarified that the registered intermediaries, irrespective of the amount of transaction and/or the threshold limit envisaged for predicate offences specified in part B of Schedule of PMLA, 2002, shall file STR if they have reasonable grounds to believe that the transactions involve proceeds of crime.*

SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013:-

1.8 Safeguards to address the concerns of the investors on transfer of securities in dematerialized mode.

vii. The DPs shall cross check with the BOs under exceptional circumstances before acting upon the DIS.

viii. *"….The authorized official of the DP verifying such transactions with the BO, shall record the details of the process, date, time, etc., of the verification on the instruction slip under his signature".*

22. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 15HB of the SEBI Act, read with Section 19G of Depositories Act.

23. In response to the SCN, Noticee filed the reply to the SCN vide letter dated September 01, 2021. Opportunity of hearing was provided to the Noticee through video conferencing on September 06, 2021. Advocate Ravi Prakash, authorised representative (AR) of the Noticee attended the hearing and reiterated the submissions made in reply. Vide letter dated September 16, 2021 Noticee submitted post hearing submissions to the SCN.

24. The key submissions of the Noticee are summarized as below:

25. The investigation report has not been provided to Noticee, only a few tables printed in the SCN along with 2-3 annexures were provided, and Noticee did not have opportunity to examine or comment upon the correctness of the data/information relied upon for the said investigation by SEBI.

26. Date of Opening of Account with Noticee –Account of Sunil Singh was opened with Noticee only on May 13, 2013. Whereas, all the instances of cash payment pointed out in SCN are prior to this date. As such, subject matter does not pertain to Noticee. Similarly, in case of Natraj the account was opened on September 07, 2012 whereas, the instances are way back from 2010. However, based on

internal due diligence, STR with FIU were filed on August 20, 2013 in case of Natraj and on March 12, 2014 in case of Sunil Singh. There were 14 STR's filed on the issue of large off-market transactions.

27. Proper Due Diligence was conducted- It is alleged Noticee failed to exercise due diligence or to file STR/CTR reports in its role as a DP when it came to the execution of transactions made by its clients in the scrip of DLFL during the Investigation period. However, the assertions so made seem to assume some form of duty impingent on Depository Participants to investigate the transactions of their clients beyond what is usually required of an intermediary fulfilling their job during the period under consideration. Noticee has diligently fulfilled its duty as DP and even filed as many as 14 STRs during the Investigation Period regarding the same issue of large off market transactions.

28. DP's role was merely as a Facilitator- the role of DP during the said period was limited to reconfirm and facilitate the transactions entered into by the Beneficial Owners ("BOs"), to transfer securities between accounts, to assist in safe keeping of such securities, and so on. As long as instructions sent by BO account holders are in order, DIS slips are properly detailed and verified, and the details match the BO Master slip, the DPs don't have to start with suspicion on every transaction that is executed. The duties impingent on DPs have gotten stricter in recent years, but the Investigation Period pertains to 2013-14, and the relevant provisions of law applicable imposed limited duties on DPs as a facilitator, let alone require that they independently investigate and determine the purpose of off-market transactions. Once the facilitative role of a DP as an intermediary has been discharged in accordance with law, it will be unjustified to punish Noticee for a supposed lack of diligence and not the violation of a specific law/statute.

29. Strong Internal Control Systems of Due Diligence- Noticee's conduct has always been guided by internal control systems and applicable laws, where due diligence is not conducted on only one level but rather three levels – at the opening of the Account, at periodical intervals during each transaction, and due diligence at the larger DP level. All possible due diligence was conducted in the present matter, and Noticee has not been negligent in the slightest. Scanned copy of DIS showing verification by Compliance Officer in 5 clients (that could be traced) is submitted. But, due to lapse of inordinate time, all the specifics of the procedures performed 7 years ago - cannot be provided by documentary evidence at this belated stage.

30. None of the Promoters were Noticee's Client: Paragraph 5 of the SCN delineates that one of the primary bases of the SCN is that promoter entities of DLFL transferred substantial quantities of shares to several entities during the investigation period. None of the promoters are clients of Noticee. There is a single transaction involving a promoter – Ms. Meera Mishra with Tushar India Pvt. Ltd. dated July 22, 2013; however, as stated above, Ms. Mishra is neither Noticee's client, nor any alert available in Noticee's system against her. The said transaction was executed on behalf of the other party Tushar India Pvt. Ltd, which is Noticee's client. An STR report was also duly filed for this party (Tushar India Pvt. Ltd.) as well – which was all the action that could be taken legally by the Notice.

31. No definition of "exceptional circumstances" under law: Paragraph 13 of the SCN alleges that certain off-market transactions from the year 2013-14 were alleged to be transactions made under exceptional circumstances because of their

categories, which have been delineated by SEBI itself. However, no provisions of law or definition via precedent has been mentioned in the SCN to classify those transactions as 'exceptional circumstances' – the categories so mentioned in the SCN are the work of the Regulator upon conducting a detailed investigation. The alerts received from the Depositories (as also mentioned in the SCN) do not ever mention any reasons or categories alongside those alerts – rather, alerts are sent via an automated system by the Depositories on a regular basis (especially with regard to off-market transactions) and are part of the normal course of business. The alerts did not point out anything wrong or suspicious in itself - But Noticee upon its own due diligence thoroughly checked and verified the transactions which is also substantiated from the fact that many STRs were filed whenever Noticee found any anomaly in the transactions.

32. The provisions of Clause (vii) of Reg. 1.8 of Master Circular dated April 15, 2013 are only to safeguard the interest of the BO/Client and to give them the confidence in safety of electronic mechanism of share transfer and have nothing to do with scrutiny of the BO or its transactions. The impugned transfers were always executed pursuant to verification of the BO account holder, in compliance with the applicable circulars and provisions, and reasons had been provided in the DIS slips of the impugned transactions, there was no onus on Noticee to investigate further. Upon verification, no suspicion arose regarding the legitimacy of these transactions. Further, nowhere the law applicable during the relevant period categorized those transactions as exceptional or suspicious. In absence of any contemporaneous statutory/regulatory instruction Noticee did not assume an investigative role going beyond its scope. With no substantial or statutory reason to read these transactions as exceptional circumstances Noticee thus

reasonably complied with the due diligence requirements as were then applicable to a DP for giving executing the DIS so presented.

33. There is no violation of Clause (viii) of Reg. 1.8 of the above-mentioned Master Circular dated April 15, 2013 – as alleged. There are two prerequisites for said Clause to come into play – either the concerned account must have been inactive for a continuous period of 6 months, OR if the concerned BO Account has 5 or more ISINs, and all such ISINs are transferred at one time. For all accounts involved in trading during the Investigation period, neither of these criteria met at any point.

34. No Cash Transactions involved: Paragraph 13 of SCN also mentions that in case of two source clients, nine transactions were carried out in cash. As per SCN in the details of these nine instances, it is alleged that the reason for the transactions was mentioned as 'cash' by the Source Clients in the DIS slips. The said observation is incorrect and highly misleading as no such reasons were mentioned in the DIS. Reasons mentioned were only Loan or Repayment of the Loan. It is added that in both cases STR was filed.

35. Duly filed the STR Reports required under AML Provisions: The allegations in the SCN pertaining to CTR/STR transactions is with respect to paras 13.2 and 13.3 of the SEBI Master Circular on AML Rule dated 31.12.2010, which states that Intermediaries have to report Cash Transaction Report (CTR) and Suspicious Transaction Reports (STR). As detailed above, STRs were duly filed with the FIU for all transactions which seemed out of the ordinary, and no CTRs were required to be filed. No cash was shown to have been involved in any of the transactions, and there was nothing on record to the contrary. As a DP, Noticee was only

required to transfer securities from one BO to another, and there was no cash involved in any of those transactions. Thus, all necessary reporting to the FIU for suspicious transactions have been made and the requirements of due diligence were duly complied with.

36. Also, Paragraph 21 of the SCN alleged that the transactions executed by Natraj Capital and Credit Ltd. and Mr. Sunil Singh were the "cash" transactions and thus required to be reported to FIU. The SCN further observed that such transactions were falling under exceptional circumstance as there was no mention of consideration, Noticee had not ascertained the economic rationale of the transactions etc. As detailed above, accounts were opened on September 07, 2012 (Natraj) and May 13, 2013 (Sunil Singh) Client Master showing the date of opening of account is also provided. Noticee has also filed STRs with respect to the suspicious transactions executed by Natraj and Mr. Sunil Singh (After opening of their account with Noticee) to FIU.

37. Moreover, FIU reporting was made on August 20, 2013 in the case of Natraj, and on March 12, 2014 in the case of Sunil Singh. All the dates mentioned in Column 8 of the same table above Paragraph 21 are after these dates – since FIU reporting was already made after a detailed due diligence process, nothing more was required, and indeed nothing more could be done – the AML Circular specifically directed that those suspicious transactions not be stopped, nor any hints given to the clients that Noticee found their transactions suspicious. Thus, Noticee had fulfilled its requirements of due diligence, and made all necessary STR reporting.

38. As the inquiry in the matter is complete, I now proceed to decide the matter on the basis of SCN issued, reply received and material placed on record.

CONSIDERATION OF ISSUES AND FINDINGS

39. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether the Noticee violated clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as **"D&P Regulations, 1996"**) read with Regulation 20AA ibid read with Regulation 98 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as **"D&P Regulations, 2018)** and clause 1.8(vii) & 1.8(viii) of SEBI Master Circular, CIR/MRD/DP/13/2013 dated April 15, 2013 and clause 13.2 & 13.3 of SEBI Master Circular, CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010 ?
Issue No. II	If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act, read with Section 19G of the Depositories Act?
Issue No. III	If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules; and Section 19I of the Depositories Act read with Rule 5(2) of the Depositories Adjudication Rules?

Issue No. I Whether the Noticee violated clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of SEBI (Depositories and

Participants) Regulations, 1996 (hereinafter referred to as "D&P Regulations, 1996") read with Regulation 20AA ibid read with Regulation 98 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as "D&P Regulations, 2018) and clause 1.8(vii) & 1.8(viii) of SEBI Master Circular, CIR/MRD/DP/13/2013 dated April 15, 2013 and clause 13.2 & 13.3 of SEBI Master Circular, CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010 ?

40. In regard to the preliminary submissions of the Noticee that investigation report and complete set of information were not provided to the Noticee, I note that all the relevant documents and information that have been relied upon in the instant proceedings have already been provided to the Noticee as SCN and annexures to the SCN.

41. The allegations against the Noticee are based upon certain off market transactions in respect of which Noticee was required to carry out certain due diligence as well as reporting under AML requirements. The transactions are alleged to be under exceptional circumstances whereby DPs were required to cross check with the Beneficial Owners (BOs) about the transactions before its execution.

42. The Noticee has contended that the role of the DP is of a facilitator which it discharged in accordance with the law prevailing at the time. There was no definition or categories defined for "exceptional circumstances" under law and it has not violated of Clause (vii) and (viii) of Reg. 1.8 Master Circular dated April 15, 2013, since it exercised due diligence or/and filed STR/CTR reports in its role as a DP when it came to the execution of transactions made by its clients in the

scrip of DLFL during the Investigation period. Further, there was no cash transaction as alleged in Para 13 of the SCN.

43. In this regard I note that I note that clause 1.8 (vii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013 states that "The DPs shall cross check with the BOs under exceptional circumstances before acting upon the DIS" However, the term "exceptional circumstances" has not been defined, and there is no provision in the aforesaid circular, giving any indication or direction as to which transaction is to be classified as exceptional. The differentiation of the off market transactions into categories such as "Cash", "Gift", "Loan/ Return of Loan shares", "Bad Delivery/Delivery Return" and "Consideration not mentioned category", and treating these categories as exceptional circumstances, is not provided in this circular which was applicable during the relevant period. These categories were specified much later in July 2019.

44. Since, there were no parameters prescribed in applicable circular against which the impugned transactions could be compared by Noticee, the Noticee was well within its rights to define exceptional circumstances and then consistently follow such definition. Hence, it only needs to be ascertained whether Noticee exercised adequate reasoning while considering these transactions as usual. I take note of the contention by the Noticee that it did verify the details of the Beneficial Owners and the transactions in line with the standing instructions and internal control systems. The Noticee has also produced scanned copy of DIS showing verification by its Compliance Officer in case of 5 clients as well as provided documents with respect to filing of STRs in certain cases. While the Noticee has not produced records to substantiate such verification in all the cases on account of non-availability of records, I note that material on record does not bring out any

concerns raised by respective BOs with regard to impugned transactions. I further note that this requirement of cross-checking with the BO was put in place to safeguard the concerns of investors.

45. I have perused the DIS slips based on which the allegations referring to exceptional circumstances as well as suspicious transactions are made. I note that there in all DIS slips, except two, 'Return/Repayment of Loan' / 'Loan' / 'Gift' is mentioned as reason of transfer. Further, there is nothing in the DIS slips indicating that the off market transactions were cash transactions. Hence, I note that reason for not mentioning consideration is recorded.

46. Therefore, there is insufficient material on record to conclude that these off market transactions were cash transactions or were under exceptional circumstances. Hence violation of clause 1.8 (vii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013 by Noticee is not established.

47. I also note that as per clause 1.8 (viii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013, verification with BO is applicable in cases wherein either all the ISIN balances in an account are transferred at a time and there was no debit transaction in the account for past 6 months, OR if the concerned BO Account has 5 or more ISINs, and all such ISINs are transferred at one time. Noticee has submitted that with respect to all accounts involved in trading during the Investigation period, neither of these criteria has been met at any point. I find that there is no material on record to substantiate that the criteria for verification as stipulated in aforesaid clause was met for the accounts involved in the off market transactions executed by the Noticee.

48. In view of the above, in the absence of any records to contradict the Noticees claims, I find that Noticee has not violated clause 1.8 (viii) of SEBI Master Circular CIR/MRD/DP/13/2013 dated April 15, 2013

49. With regard to reporting of transactions in CTR with FIU-IND, I note that the material on record is insufficient to show if there were cash transactions executed by the Noticee during the Investigation Period in excess of the ceiling of Rs. 20000/-, as specified in Section 269SS of Income Tax Act. In view of the above, material on record does not substantiate that Noticee failed to file CTR with the FIU-IND.

50. In cases of alerts received from depositories in respect of certain transactions, the allegation against the Noticee is that it had uniformly informed that the alerts were examined, no suspicion or concerns was seen, and the alerts had been closed, thereby failing to exercise due diligence. In this regard, Noticee has contended that the depository alerts did not point out anything wrong or exceptional or suspicious in itself, but Noticee upon its own due diligence thoroughly checked and verified the transactions and many STRs were filed whenever Noticee found any anomaly in the transactions.

51. Based on material on record, I find that the alerts shared by CDSL with DPs did not contain any reason or details basis which they were categorized as alerts and shared with the DPs. In the case of NSDL, I note that 6 types of alerts were shared with DPs, categorized on basis of criteria developed by depositories and FIU-IND pursuant to guidelines of PMLA Act, 2002. The DPs were required to analyze these alerts and ascertain whether the transactions intimated as alerts by the Depositories are suspicious in nature, and submit the report directly to

FIU-IND. Further, the category of exceptional transaction for the alerts were not provided by the depositories to the DPs.

52. Noticee contends that transactions mentioned in the alerts were found to be substantiated by the BO account holders upon cross-verification, and hence the alerts were then duly closed since they were not found to be suspicious by it. In support, the Noticee has submitted that the clients verbally clarified and confirmed the transactions. I note that with the given set of information available with Noticee at relevant period and keeping in view the role of DP as prescribed in applicable rules and regulations, it cannot be said with certainty that the actions taken by the Noticee were inadequate or lacking in due diligence.

53. In view of the above, I find that there is insufficient material on records to establish that Noticee did not exercise reasonable due diligence and violated clause 1, 2(b), 3, 4, 11 of Part A of Schedule III of Code of Conduct of SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as **"D&P Regulations, 1996"**) read with Regulation 20AA ibid read with Regulation 98 of SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as **"D&P Regulations, 2018).**

54. Noticee has contended that for transactions which appeared suspicious to the Noticee, on the ground that the frequency and quantity was not matching the profiles, the necessary reporting to the FIU for the suspicious accounts and the provisions of Due Diligence was complied with.

55. In this regard, I have perused the account activation dates, given in the Depository's Client Master List, and note that the Account of Sunil Singh and

Natraj Capital & Credit Pvt. Ltd. were opened with Noticee on May 13, 2013, and September 07, 2012 respectively. I also note that, in case of Sunil Singh all instances and in case of Natraj Capital & Credit Pvt. Ltd. all but one instances of cash payment pointed out in SCN were prior to date of account activation. Further, STRs were filed by Noticee on March 12, 2014 and August 20, 2013 for Sunil Singh and Natraj Capital & Credit Pvt. Ltd. respectively. I note that instances pointed out in SCN on para number 20 belong to Year 2014 period after the filing of STR in both the cases. Further Noticee, also sought explanation from these two clients including Auditor's Report. I have perused the letters from Sunil Singh and Pawan Batra in regard to their trading activity in the scrip of the company submitted to the Noticee. In total 14 STR's were filed by Noticee on the issue of large off-market transactions with the FIU.

56. Further, Noticee has submitted that none of the promoters of DLFL was its clients, and only in one single transaction dated July 22, 2013 a promoter entity namely Ms. Meera Mishra transacted with Tushar India Pvt. Ltd. (Noticee's client). I note that an STR report dated August 20, 2013 was filed by Noticee for Tushar India Pvt. Ltd. with the FIU.

57. In view of the above, there is insufficient material on records to establish that Noticee violated and clause 13.2 & 13.3 of SEBI Master Circular, CIR/ISD/AML/3/2010 on PMLA dated December 31, 2010.

58. As the violations alleged against the Noticees are not established, issues II and III do not merit consideration.

ORDER

59. In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against the Noticees vide SCN dated July 14, 2021 are disposed of.

60. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules and Rule 6 of the Depository Adjudication Rules.

DATE: October 22, 2021 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**