

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER: EAD-2/SS/SK/2018-19/774]**

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**UNDER SECTION 19-H OF THE DEPOSITORIES ACT, 1996 READ WITH RULE 5 OF DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.**

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In respect of:

**Punjab National Bank**  
**(SEBI Registration No. IN-DP-NSDL-68-98)**  
**5, Sansad Marg,**  
**New Delhi – 110001.**

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted inspection of the books of accounts/ records / documents maintained by Punjab National Bank (hereinafter referred to as 'the Noticee') in respect of activities carried out by it as a SEBI registered Depository Participant with a focus to verify whether the necessary documents / records are being maintained by it in the manner specified by the Securities Contracts (Regulation) Act, 1956, SEBI Act, 1992, Depositories Act, rules, regulations and circulars made/issued thereunder and to verify the extent of compliance with respect to provisions relating to pledge, DIS and transfer of securities and other matters related thereto. The inspection was conducted on March 21-23, 2016 and the period covered under inspection was from April 01, 2014 to December 31, 2015. The observations made during the inspection were communicated to the Noticee vide SEBI letter No. MIRSD-4/DPINSP/OW/14685/2016 dated May 20, 2016. The Noticee had submitted its comments/ explanations on the observations of the inspection vide its letters dated July 15, 2016 and October 05, 2016. Upon receipt of comments/explanation from the Noticee, SEBI has not found satisfactory with regard to the following issues:-
  - (a) DIS submitted by the Power of Attorney ("POA") holders (viz. SMC Global Securities Ltd., IDBI Capital Market Services Ltd. and Networth Stock Broking Ltd.) on behalf of clients of the Noticee having trading accounts with the said stock brokers are not signed by the POA holder and various DIS containing a total of 13,421 such instructions, amounting to Rs. 61.33 Crore, were processed by the Noticee, during the inspection period.

- (b) The Noticee had been unable to produce records of instructions received for execution of DIS submitted to it by the POA holder for the sample selected despite seeking the same repeatedly.
2. After taking into consideration the aforementioned observations and Noticee's response thereto, it has been alleged that:
- (a) For the violation as mentioned at para 1 (a) above, the Noticee has not complied with the provisions of Regulation 42(3) and Clause 4 of the Code of Conduct for Participants read with Regulation 20AA of the SEBI (Depositories and Participants) Regulations 1996 (hereinafter referred to as 'DP Regulations');
- (b) For the violation as mentioned at para 1 (b) above, the Noticee has not complied with Regulation 49(1)(c) of the DP Regulations.
3. In view of the above, SEBI felt satisfied that there are sufficient grounds to adjudicate upon the aforesaid alleged violations by the Noticee and appointed the undersigned as Adjudicating Officer *vide* order dated April 26, 2018 under Section 19-H (1) and (2) of Depositories Act, 1996 (hereinafter referred to as 'Depositories Act') and Rule 3 of Depositories (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'the Adjudication Rules') to inquire into and adjudge the alleged violation of Regulation 49(1)(c), Regulation 42(3) and Clause 4 of the Code of Conduct for Participants read with Regulation 20AA of the DP Regulations by the Noticee. The order appointing the undersigned as Adjudicating Officer was communicated *vide* a communication dated May 09, 2018.
4. Accordingly, in terms of rule 4(1) of the Adjudication Rules read with Section 19-H of the Depositories Act and terms of reference as advised in above communication dated May 09, 2018, the notice to show cause no. EAD/SKS-SKS/OW/13973/2018 dated May 10, 2018 (hereinafter referred to as 'the SCN') was issued to the Noticee, calling upon it to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 19G of the Depositories Act for the aforesaid alleged violations. The relevant provisions of DP Regulations charged in this case and possible consequential penal provision therefor as provided in Depositories Act are reproduced herein under:

***DP Regulations, 1996***

*Participants to abide by code of conduct.*

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

*Separate accounts.*

*42. (1) ....*

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

*Record of services.*

*49. (1) Every participant shall maintain the following records and documents, namely:—*

*(a) ....*

*(c) records of instructions received from beneficial owners and statements of account provided to beneficial owners;*

### ***THIRD SCHEDULE***

***Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996***

***[Regulation 20AA]***

#### ***CODE OF CONDUCT FOR PARTICIPANTS***

*1. ....*

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

#### ***Depositories Act***

***Penalty for contravention where no separate penalty has been provided.***

***19G. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.;***

5. The Noticee vide its letter dated May 19, 2018 received by SEBI vide e-mail on May 22, 2018 filed its reply with regard to the aforesaid allegations and requested for a personal hearing in the matter. Subsequent to receipt of reply from the Noticee, an opportunity of personal hearing was granted to the Noticee on June 12, 2018, in terms of rule 4 (3) of the Adjudication Rules. The notice of hearing was duly served upon it. On the hearing date i.e. on June 12, 2018, Mr. Umesh Chand Sharma, Chief

Manager and Mr. Anupam Jain, Sr. Manager, Authorized Representative (ARs), appeared on behalf of the Noticee. The undersigned explained the purpose of the hearing and the charges/offences alleged against the Noticee. During the course of the hearing, the ARs reiterated the submissions made by the Noticee vide its letter dated May 19, 2018. Vide its letter dated June 18, 2018, the Noticee also submitted post hearing written submissions. The replies/submissions of the Noticee are as follows:

“... ”

**Observation 2(a): .....**

**Our Reply:**

(a)

I) ....

II) *Our bank entered into following alliance to provide online trading facility:-*

I. *M/s. IDBI Capital Marketing Services Ltd. (in 2006)*

II. *M/s. Networth Stock Broking Ltd. (in 2009)*

III. *M/s. SMC Global Securities Ltd. (in 2009)*

III) .....

(b) *.....our bank started the online trading in year 2006, wherein the following procedure has been adopted:*

- (i) *A client who desires to do online trading, has to sign the Power of Attorney (POA) with POA holders (in our case M/s SMC, M/s IDBI Capital and M/s NSBL). **Our bank does not accept any instructions through can-n-trade and client have either to do Online trading with aforesaid brokers or submit physical DIS at branches. (Even we do not accept instruction through Fax)***
- (ii) *POA holders (M/s SMC, M/s IDBI Capital and M/s NSBL) provide us a copy of said Power of Attorney (POA) for registration of same in e-DPM.*
- (iii) *Every client who gives Power of Attorney (POA) to POA holders (M/s SMC, M/s IDBI Capital and M/s NSBL) is required to open a trading account with them for which user-id and password are issued by the POA holders. Further, client has to put OTP while log-in received on his/her registered mobile number*
- (iv) ***When client logs in to POA holders web-site, an audit trail is generated at their end which shows that client genuinely wants either to purchase the share or sell the share.***
- (v) ***As per our agreement with POA holders (M/s SMC, M/s IDBI Capital and M/s NSBL), NO client can sell the securities till marking of holding of share as "Hold" in our depository system for which the client has to obtain user-id and password from us. Thus, first the client logs on website of POA holders (M/s SMC, M/s IDBI Capital and M/s NSBL). From there he is directed to mark securities as "HOLD" on our bank's website which is accessed only after obtaining user-id and password from us. **Record of audit trail is being kept by the bank for every client who have accessed our website either for viewing the security or holding the security. (same has been provide vide our letter dated 21.05.2018).*****

- (vi) *In view of above, as soon as a client shows his willingness to sell his/her share on POA holders website, then the POA holders web-site directs clients to our bank's web-site for marking the holding of share as "Hold ... As soon as client marks "hold" on his security, our web-site sends confirmation of same to POA holders web-site, therefore, no client can be "oversold" or cannot sell the share which he does not possess or **shares can't be sold by POA holders without knowledge as well as prior confirmation from client***
- (vii) *Further, we would like to place that POA holders (M/s SMC, M/s IDBI Capital and M/s NSBL) cannot access our banks website to view the holding of our client, hence POA holders cannot sell the clients share without his consent. Now it is clear from aforesaid facts that: share can be sold by client's only by logging on POA holder website as well as on our banks website.*
- (viii) *We would also like to place that NO client can do the online trading through POA holders website until and unless they maintain a deposit account with us and have **access to internet banking**, for which he/she has to obtain another set of password. Further, for all the securities sold, the funds have to be credited into deposit account with us for which client receive a SMS from the bank.*
- (ix) *Besides. NSDL sends an SMS to client whenever there is debit or' security in his Demat Account as well as statement of account on quarterly basis on email address or through post to the client. Hence there is no way of mis-selling the security*
- (x) *In view of above, our submission is that there are adequate checks in the system to prevent any unauthorized debit in the demat account of a client by POA holders. Our client who opens trading account with POA holder is well aware when any trade takes place in his account and no trading can take place without his electronically given consent on POA holder website as well as our web-site. **Further letter from aforesaid POA holders clearly stated that all the transactions were genuine.***
- (xi) *Also for the period of SEBI inspection concerned, no complaints have been received by the bank either from customers directly or through SEBI/NSDL regarding unauthorized or excess debit of security in his debit account.*
- (xii)
- a. ***Apart from above, We would like to place that after commencing of work as Depository Participant of NSDL, they were conducting inspection of our DP annually on regular basis including the period of SEBI inspection as per their Bye-laws and business rules and till date NO irregularities regarding modus operandi of combined delivery slip was pointed-out by them since 2006.***
- b. ***Further, we would like to place that NSDL never insisted on production of DIS from POA holders, as same cannot be entered in e-DPM for debiting of security of client as securities are lying in the client account. To quote, the copy of findings of NSDL inspection of our DP for the past 10 year is enclosed.***
- c. *Further we have to submit that from POA holders/broker on behalf of clients were being received electronically through authorized /official emails-ids only of the concerned POA holders/brokers. The print of these e-mails received from POA holders are shown to the inspecting officials.*

- d. Also, a confirmation regarding authorized/ official email confirming all the debit and credits in client account from concerned POA holders is already submitted to your office.
- e. Further, after aforesaid inspection conducted by SEBI w.e.f. 01.07.2016, the combined delivery instructions received from POA holders are routed through SPICE/ speed-e utility of NSDL in terms of which debit instructions from POA holders through emails are not required, Also this is without involving any manual intervention. Further all POA already stand registered in e-DPM.

**From our above reply, it is evident that our DP has not violated provisions of regulation 42 (3) that every entry in the beneficial owner's account shall be supported by electronic instructions or any other mode of instruction received from the beneficial owner in accordance with the agreement with the beneficial owner. Hence it was never pointed out by our Depository NSDL in their any annual inspection. (Copies enclosed)**

**Further, we would like to place that we have not violated any provisions of regulation 20 AA of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 as our DP as per clause 4 has executed debit instruction slip and in all the other activities undertaken by him on behalf of the beneficial owners which is evident from aforesaid reply. Also no complaint has been received against us in any manner and in any time period either with your office (SEBI) or NSDL or directly by our bank about any unauthorized transactions in any of beneficial owner account.**

#### **1. Observation 2(b)**

The DP had been unable to produce records of instructions received for execution of DIS submitted to the DP by the POA holders for the sample selected despite seeking the same repeatedly

#### **Our Reply**

- i. We would also like to place that all the aforesaid transactions were routed through deposit as well as demat account maintained by clients with us only and till date we have not received any complaint regarding wrong credit/ wrong debit/ non receipt of funds / wrong debit of any funds from their end directly or through NSDL or any regulator or any stock exchange or your customer grievances portal "Scores". Further, all the records pertaining to debit instructions of beneficial owner account received directly from them or through POA holders whom they have given POA has been placed before inspecting officials
- ii. It is further submitted that NSDL is conducting annual inspection of our DP since inception. During the past inspections, system and procedures were also discussed and audited by them. However, before inspection by SEBI officials, NSDL who is conducting annual audit from past 10 years when Online trading started, has never pointed out such alleged discrepancy in our systems and procedures for handling instructions from POA holders or any contravention to above stated business rules or their bye laws at 9.6 (transfer of balances).
- iii. **Further, we would like to place that NSDL never insisted on production of DIS from POA holders as same cannot be entered in e-DPM either for issuance to them and for debiting of security in beneficial owner account as securities are lying in the beneficial owner account and are not viewable to the POA holders as stated above.**

**In view of above, violation of regulation 49 (i) (c) of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 has not taken place as we are maintaining records of all instructions received from beneficial owner including the debit instructions of their account (transfer of security) either submitted by them directly to**

*us or through POA holders. Further, as per this regulation our DP as well as NSDL has been provided statement of accounts either through email or by post, as the case may be, besides, SMS of the debit instructions in the account so that any unauthorized debit may not take place Since the inception of becoming Depository Participant to till date, we have not received any complaint from any beneficial owner either directly or through NSDL or your goodself that their account was unauthorizedly debited. This is because of our robust system as explained above, wherein POA holder could not view holding of any beneficial owner.*

.....”.

6. I have considered the allegations levelled in the terms of reference, the aforesaid submissions of the Noticee and the relevant material available on record. I note that the instant proceedings were initiated against the Noticee on account of the fact that DIS submitted by the POA holders on behalf of clients of the Noticee are not signed by the POA holder and various DIS containing a total of 13,421 such instructions were processed by the Noticee during the inspection period. In this context, the Noticee, which is a registered depository participant, has claimed that a client who desires to do online trading has to sign the POA with POA holders (in its case M/s SMC, M/s IDBI Capital and M/s NSBL) and is required to open a trading account with them for which user-id and password are issued by the POA holders. The Noticee has further claimed that it does not accept any instructions from the client through can-n-trade and the client have to do online trading with aforesaid brokers. The Noticee has mentioned that the client has to enter OTP while logging-in received on his/her registered mobile number and upon logging-in to POA holder web-site, an audit trail is generated at their end showing that the client either wants to purchase the share or sell the share. I further note that a client can sell the securities till marking of holding of share as "Hold" in its depository system for which the client has to obtain user-id and password from the Noticee. Based on the submissions, I observe that the client has to first log in into the website of POA holders and from there the client is directed to mark securities as "HOLD" on Noticee's website which is accessed only after obtaining user-id and password from it. Thus, it is observed that shares can be sold by a client by way on logging on to POA holder website as well as Noticee's website. I also note that as and when a client mark "hold" on his security, the web-site of the Noticee sends confirmation of same to POA holders' web-site. As a result, without knowledge as well as prior confirmation from client, shares cannot be sold by the client which he does not possess or shares cannot be sold by POA holders as they cannot access the website of the Noticee to view the holding of its client and POA holders cannot sell the clients' share without his/her consent.
7. I further note that a client can do the online trading through POA holders' website until and unless they maintain a deposit account with the Noticee and have access to internet banking for which the client has to obtain another set of password. Thus, for all the securities sold,

the funds have to be credited into deposit account with the Noticee for which client receive a SMS from the Noticee. In support of its claim, the Noticee has provided a record of audit trail kept for every client who have accessed its website either for viewing / holding the security.

8. In view of the facts mentioned in paragraph 6 and 7 above, I note that trading of share takes place with the electronically given consent of the client on POA holder website and website of the Noticee. Thus the requirement as specified under regulation 42 (3) of the DP Regulations that *“Every entry in the beneficial owner’s account shall be supported by electronic instructions...”* remains fulfilled as the systems and procedures adopted by the Noticee reflects substantial compliance on the part of the Noticee with the provisions of the said regulations. I further note that, as per Clause 4 of the Code of Conduct for Participants, the Noticee is obligated to perform various activities on behalf of the beneficial owners which, *inter-alia*, include execution of debit instruction slip. In this case, the fact that the Noticee had executed delivery/debit instruction slip is not in dispute. But, whereas the allegation is that the DIS submitted by the POA holders on behalf of clients of the Noticee are not signed by the POA holder i.e. stock broker. Resultantly, there is gap between the requirement prescribed under the said regulations and allegation levelled against the Noticee. I am, therefore, of the view that the requirement as specified under Clause 4 of the Code of Conduct for Participants read with Regulation 20AA of the DP Regulations that *“A participant shall be prompt and diligent in ..... execution of debit instruction slip ....on behalf of the beneficial owners”* remains fulfilled as the systems and procedures adopted by the Noticee reflects substantial compliance on the part of the Noticee with the provisions of the said regulations. I further note that the depository NSDL which is conducting annual audit of the Noticee from past 10 years, including the period prior to and post inspection, has not pointed out such alleged discrepancy in the systems and procedures adopted by the Noticee for handling instructions on behalf of the clients from POA holders.
9. In the instant matter, the second allegation against the Noticee is that it had been unable to produce records of instructions received for execution of DIS submitted to it by the POA holder for the sample selected despite seeking the same repeatedly. In this regard it has been alleged that the Noticee has not complied with Regulation 49(1)(c) of the DP Regulations. I note that as per regulation 49(1)(c) of the DP Regulations a depository participant, is obligated to maintain two documents viz. (i) records of instructions received from beneficial owners; and (ii) statements of account provided to beneficial owners. However, the allegation is that the Noticee had been unable to produce records of instructions received for execution of DIS submitted to it by the POA holder for the sample selected despite seeking the same repeatedly. Thus, the allegation levelled against the Noticee to this extent is vague. I further note that the



depository NSDL which is conducting annual audit of the Noticee from past 10 years, including the period prior to and post inspection, has not pointed out such alleged discrepancy in the systems and procedures adopted by the Noticee with regard to maintaining records of instructions received from beneficial owners.

10. In view of the above, I am inclined to conclude that violations as alleged do not stand established and the case does not warrant imposition of any monetary penalty. The SCN is disposed of accordingly.

11. In terms of Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticee and also to SEBI.

**Date: June 25, 2018**

**Place: Mumbai**

**Santosh Shukla**

**Adjudicating Officer**