BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 255 of 2009

Date of decision: 30.4.2010

Pinnacle Shares Registry Pvt. Ltd.
Near Ashoka Mills, Naroda Road,
Ahmedabad. …… Appellant

Versus

The Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai. … Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Vinay Chauhan and
Mr.Ankit Lohia, Advocates for Appellant.

Mr. Darius J. Khambata, Senior Advocate with
Dr. Mrs. Poornima Advani, Advocate, Ms. Megha Bajoria and Mr. Vikram Deshmukh,
Advocates for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

Per : Justice N.K. Sodhi, Presiding Officer

Whether the Securities and Exchange Board of India (for short the Board) was right in cancelling the certificate of registration of the appellant as Registrar to an issue and share transfer agent (RTA) is the short question before us in this appeal. Facts giving rise to this appeal are these.

2. Parsoli Corporation Ltd. is a public limited company incorporated under the provisions of the Companies Act, 1956 whose shares are listed on the Bombay Stock Exchange Limited, Mumbai (BSE). It shall be referred to hereinafter as ‘Parsoli’. It

carries on the business of a non-banking finance company and is also a stock broker on the National Stock Exchange of India Limited and BSE. Parsoli is also a depository participant affiliated with the Central Depository Services (India) Limited providing depository services to its clients. Every listed company is mandatorily required to have a share transfer facility either in-house by whatever name called or through an RTA. Parsoli opted to avail the services of an RTA for handling the share transfer work. RTAs are intermediaries of the securities market registered with the Board under the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 (hereinafter called 'the Regulations'). On April 25, 2003 Parsoli entered into an agreement with Pinnacle Shares Registry Pvt. Ltd., the appellant herein and appointed the latter as its share transfer agent to handle the share transfer work, both physical and electronic. The appellant had been registered as an RTA with the Board on 12.3.2003 and it undertook to perform and fulfill the functions, duties and obligations as a share transfer agent and to provide such other services as mentioned in the agreement. Every share transfer agent is required at all times to abide by the code of conduct as specified in Schedule III to the Regulations. A share transfer agent is required to ensure that enquiries from investors are adequately dealt with, grievances of investors are redressed without delay and transfer of securities held in physical form and confirmation of dematerialization / rematerialization requests is done within the time specified by law. It is also the requirement of the code of conduct that an RTA should make reasonable efforts to avoid misrepresentation and ensure that information provided to the investors is not misleading. An RTA is required not to reject the dematerialization / rematerialization requests on flimsy grounds and that such requests could be rejected only on valid and proper grounds supported by relevant documents. An RTA is expected to maintain an arms length distance from the body corporate on whose behalf it acts as an RTA and is required to exercise due diligence and ensure proper care. The two basic qualifications of an RTA needed for the purpose are (a) they should work in an ethical and professional manner and (b) in the performance of their duties, they should not only be prompt but also show high standards of integrity and independence of judgment. This apart, a share transfer agent is also required to maintain records of holders of securities of such body

corporate on whose behalf he is carrying on the activities as share transfer agent and is required to deal with all maters connected with the transfer and redemption of its securities. It is required to maintain the names of transferor and transferee and the dates of transfer of securities and such other records as may be specified by the Board for carrying out the activities as share transfer agent. The Board in exercise of its powers under section 11 of the Securities and Exchange Board of India Act, 1992 (for short the Act) read with Regulation 14(3)(c) of the Regulations issued a circular dated 11.10.1994 **requiring all share transfer agents to maintain, among others, specimen signature cards and transfer deeds**. In compliance with these statutory provisions, the agreement executed between Parsoli and the appellant contains the following clause:

> "29. The Company and Transfer Agent shall maintain following documents and records pertaining to Transfer activities by way of hard copies and if required may be stored by way of tape drives / in computers.
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> a) Check-list, inward register, transfer register, buyer / sellers register with net effect as on date of approval of transfer proposals, transfer deeds, **specimen signature cards / signature captured on signature scanner,** despatch register / postal journal, objection memos, mandates, Power of Attorney / Board Resolution, RBI Approval in case of NRI, Jumbo Transfer Deeds of in case of FIIs, Register of Members, Annual Returns / Return of Allotment, Interest / Dividend Register.
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> b) to f) ……"
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> (emphasis supplied)

3. On receipt of complaints from the shareholders of Parsoli about the rejection of their dematerialization / share transfer requests, the Board conducted an inspection of the records of the appellant in June and July, 2008 to look into the role played by the appellant as RTA to Parsoli. The Board found that the appellant committed several irregularities while handling the share transfer work and that it aided and abetted Parsoli in the fraudulent transfer of physical shares from various investors' accounts by using transfer deeds containing forged signatures of investors. The inspection revealed that all fraudulent transfers took place in off-market trades from various investor accounts to the accounts which were in the names of persons either belonging to the promoter group of Parsoli or the front entities of the promoters and that such transfers were approved by a transfer committee consisting of the representatives of the promoters of Parsoli. Further, there were instances of delay in dematerialization and improper rejection of the

dematerialization requests made by the investors and this, according to the Board, was violative of the code of conduct prescribed for RTAs under the Regulations. Accordingly, a notice dated May 4, 2009 was issued to the appellant under Regulation 28 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (for short Intermediary Regulations) for the alleged fraudulent acts in dematerialization, delay, non-transfer of shares and issuance of duplicate share certificates of Parsoli. It was alleged that the appellant had violated the code of conduct and also Regulations 53A and 54(5) of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (FUTP Regulations) and the Board's circular dated December 27, 2002. It was further alleged that the appellant had functioned as a share transfer agent without taking possession of the specimen signature cards which are essential for the purpose of transfer of securities and that it failed to maintain statutory records. It was also pointed out in the show cause notice that the appellant on the basis of a letter from Parsoli had rejected the requests of the investors for dematerialization on the ground that the shares already stood dematted whereas the investors were given a different reason that the duplicates had already been issued. It was further alleged that even though Parsoli was informing the investors through letters marked to the appellant that certificates had already been dematted, it nevertheless gave credit in the demat account of the investors by off-market credit of shares for which the appellant did not raise any objection thereby violating clause 7 of the code of conduct. Another allegation made in the show cause notice is that the certificate numbers mentioned in the demat request forms and the numbers on the transfer deeds used for fraudulent transfers were the same in many cases implying that no duplicate certificates had been issued and since the appellant had admitted that it did not verify the antecedents of the share certificates sent for transfer by the investors, it failed to exercise care and due diligence before rejecting the demat requests. The appellant is also alleged to have transferred shares into the accounts held in the names of promoter group and their entities without following the procedure for such transfers and that it dematerialized shares even when the signatures on

the demat request forms were not tallying with those on the transfer deeds or even when the transfer deeds were without signatures. The appellant is also said to have delayed the process of the demat requests of the investors beyond 15 days prescribed by law. A copy of the inspection report was enclosed with the show cause notice and the appellant was called upon to show cause why its certificate of registration be not suspended or cancelled. The appellant filed its reply on May 28, 2009 denying and refuting all the allegations. The enquiry officer conducted an enquiry and after giving the appellant sufficient opportunity of being heard submitted his report on July 1, 2009 holding the appellant guilty of the charges levelled against it. He recommended that a penalty of prohibiting the appellant from taking up any new assignment or contract for a period of 3 years may be considered in terms of Regulation 28(iii) of the Intermediary Regulations. On receipt of the report from the enquiry officer (designated authority), the whole time member (designated member) issued a show cause notice on the same day and sent a copy of the enquiry report along with it calling upon the appellant to show cause why action be not taken against it as recommended by the enquiry officer for the irregularities/illegalities committed by it while functioning as an RTA. The appellant filed its reply on July 24, 2009 denying all the allegations once again. Thereafter a supplementary show cause notice dated September 16, 2009 was issued to the appellant pointing out that the designated member having considered the findings of the designated authority was of the view that in the light of the serious allegations having been established in the enquiry report, a higher penalty was called for including the cancellation of the certificate of registration. Accordingly, the appellant was called upon to show cause why a higher penalty be not imposed on it. The appellant filed its reply on September 23, 2009 and after considering the same and the enquiry report including the inspection report and other material on the record, the designated member by his order dated October 14, 2009 cancelled the certificate of registration of the appellant as RTA with effect from February 28, 2010 with a further direction that during the intervening period the appellant shall not take on new clients in its business. The appellant was also directed to wind up its business as RTA and its clients were required to make alternative

arrangements to avail the services of other RTAs. It is against this order that the present appeal has been filed under Section 15T of the Act.

4. We have heard the learned senior counsel on both sides.

5. What is contended by Shri Janak Dwarkadas, learned senior counsel for the appellant is that all the allegations made against the appellant as an RTA are linked to the fraud allegedly committed by the promoter group of Parsoli and its front entities and that the appellant is said to have aided and abetted Parsoli and its promoters in the commitment of the alleged fraud and that till such time the fraud against the principal offender(s) is established, the certificate of registration of the appellant could not be cancelled. It is also argued by the learned senior counsel that the findings recorded in the impugned order to the effect that the cancellation of the certificate of registration of the appellant could be justified independently of the alleged fraud committed by Parsoli and its promoters goes beyond the show cause notice as all the allegations made in the show cause notice are linked to the alleged fraud committed by Parsoli and its promoters. According to the learned senior counsel for the appellant, the only charge levelled against the appellant which is not linked with the fraud is the delay in processing the demat requests from the investors. It is argued that the Board could point out only 10 instances of delay beyond the prescribed period of 15 days in processing the requests for dematerialization and even if it be argued that there was delay in the instances pointed out, the appellant could, at the most, be held to be negligent which would not justify the cancellation of its certificate of registration. We have given our thoughtful consideration to the arguments of Shri Janak Dwarkadas, Senior Advocate but have not been able to persuade ourselves to agree with him for the reasons that follow hereafter. It is common case of the parties that proceedings against Parsoli and its promoters are still pending and findings regarding fraud played by them have yet to be recorded. We would have agreed with the learned senior counsel for the appellant that the certificate of registration of the appellant should not have been cancelled till the findings of fraud against the principal offender(s) were established if it was the appellant's case that no fraud had been committed when the shares were transferred. However, in this appeal it is the appellant's

own case that Parsoli and its promoters and their front entities had played fraud in transferring the shares of genuine shareholders to their own accounts on the basis of transfer deeds containing forged signatures or no signatures though it says it had no role to play in that fraud. This was also the case of the appellant before the whole time member. When the appellant admits that Parsoli and its promoters had played fraud in transferring the shares, the only question that needs to be examined is whether the appellant had aided and abetted the principal offenders in the commitment of the fraud as alleged in the show cause notice. This is what the appellant has stated in the memorandum of appeal.

> "(i) The Appellant was not aware that the transfer deeds forwarded to it contained the signatures forged by the promoters of PCL. As and when the transfer deeds were received by the Appellant confirming the authenticity of share certificate and the signatures of transferor from PCL, the Appellant used to process the transfer requests. It is submitted that since the signature records were with PCL and were not handed over to the Appellant as the same were in torn condition, the appellant had processed the transfer requests only after receiving the confirmation regarding signature verification from PCL. Admittedly, all the transfers were duly certified by the Share Transfer Committee of PCL (consisting of its Promoters and higher officials) and even PCL or its promoters have not disputed the same.
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> (ii) The Appellant processed the transfer requests in the ordinary course of business relying on the signature confirmation by PCL as per the records, without being aware that the signatures on the Transfer deeds were forged by the promoters of PCL and were being wrongly certified by PCL and that the shares were being transferred to the accounts of persons belonging to promoter groups or the persons connected to them. Admittedly, in the Transfer deeds or DRF's there is nothing to indicate that the same pertains to Promoters of PCL.
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> (iii) For the forgery and the fraudulent acts committed by the promoters of PCL, the Appellant cannot be held liable. At the relevant time there was nothing to excite the suspicion of the Appellant that promoters of PCL were forging the signatures and incorrectly certifying the signatures to be that of investors. In this context the Respondent has ignored that at the relevant time, both the promoters of PCL and PCL enjoyed good reputation in market circles.
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> (iv) ……
>
> (v) …….
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> (vi) While processing the alleged transfer requests as mentioned in the para, it is submitted that the Appellant was not aware about the forgery and the fraud being perpetrated by the promoters of PCL by certifying wrong signatures to the Appellant for the purpose of getting the shares transferred to their accounts. At the relevant time the Appellant processed the transfer requests in the ordinary course relying on the signature confirmation by PCL. ……."

Having admitted that Parsoli and its promoters and their front entities had defrauded the genuine shareholders, the appellant cannot argue that its certificate of registration should not be cancelled till such time the case against Parsoli and its promoters is decided. Since fraud is now an admitted fact in this case, we have only to examine the appellant's role in perpetrating the fraud or in aiding and abetting Parsoli and its promoters/front entities in the commitment of that fraud.

6. It is not in dispute that in about 450 cases, the shares of genuine shareholders had been fraudulently transferred to individuals belonging to the promoter group of Parsoli or to their front entities on the basis of transfer deeds containing forged signatures or no signatures. The case of the appellant is that it was not aware that the transfer deeds forwarded to it contained signatures forged by the promoters of Parsoli and that it processed the transfer requests in the ordinary course of its business relying on the signature confirmation by Parsoli. It is also the appellant's case that it was never handed over the specimen signature cards which were at all times with Parsoli as they were in torn condition and that it used to process the transfer requests only after receiving the confirmation regarding signature verification from Parsoli. In the facts and circumstances of this case, we are not believing the version of the appellant but even if we were to assume it to be true, the impugned order cancelling its certificate of registration deserves to be upheld. It was in April, 2003 that the appellant entered into an agreement with Parsoli to act as its RTA and it was its primary duty to obtain all the statutory records including the specimen signature cards and transfer deeds before commencing its share transfer activity as RTA. Since it failed to obtain the necessary records, it violated the mandatory directions issued by the Board to all RTA's through its circular dated 11.10.1994. There was an obligation on the part of Parsoli as well to transfer all the necessary records to the appellant and if, for any reason, the former failed to perform its part of the duty under the agreement, the appellant should not have commenced its business as RTA. The conduct of the appellant leaves much to be desired and does not inspire confidence to believe its version that it was unaware that the transfer deeds contained forged signatures. It merrily continued transferring the shares on the bidding of

Parsoli without making any attempt to obtain the specimen signature cards, the most vital document necessary for share transfer. It is like a bank which encashes the cheques of the drawer without verifying his signatures on the ground that it was not in possession of the signature verification cards. Should such a bank be allowed to continue even for a moment? Obviously not. Same is the case with an RTA whose primary duty is share transfer work after verifying the signatures of the transferors. It is the appellant's case that it was processing the share transfer requests in the ordinary course of its business after obtaining the signature verification from Parsoli. On its own showing, the appellant had abdicated its primary duty of signature verification to Parsoli. It was strenuously argued by its learned senior counsel that the shares were being transferred by the appellant in the ordinary course of its business. We cannot agree with the learned senior counsel in this regard. The least which the ordinary course of business of an RTA demands is verification of signatures at its own end after comparing the same with the signature verification cards. Since this basic function was not performed, we are satisfied that the appellant rendered itself unfit to operate as an RTA. In this view of the matter, we cannot but hold that the appellant failed to exercise due diligence and independence of professional judgment which it was required to exercise at all times in the conduct of its business as an RTA.

7. Apart from not exercising due diligence and independence of judgment, it is reasonable to infer that the appellant was aiding and abetting Parsoli in the fraudulent transfer of shares. It was after more than two years that the appellant for the first time by its letter dated 4.6.2005 made a tentative attempt, if at all it could be described as an attempt, to obtain the signature records from Parsoli. It is amusing to note what the appellant stated in this letter.

> "Re: Signature verification at your end and request for compliance at your end.
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> With reference to the above we write to you as under:-
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> 1) We have been appointed as full R & T of the company and therefore company has to handover all the records pertaining to securities transfer including signature records to the R & T for smooth working/processing share transfer activities at R & T level and as per SEBI rules and regulations.

However, it is observed that till date signature records have not been handed-over to R & T. It may be due to technical reason or some other problem at your end or you are reluctant to part with the signature records.

2) DRF requests alongwith Share Certificates and Transfer Deed with share certificates are forwarded to you for signature verification and after signature verification the same are returned to us by courier or peon.

3) In view of the above we are facing certain problems and request you to comply as under:-

a) Signatures are verified at your end and you are just putting cross by pencil without signature of the authorised signatory who has verified the signature.

b) When the signature is differed no details as to signature difference mentioning " signature in full or "like this" or is in English or in Gujarati or other language. Further signature mismatch of first holder or second holder or 3rd holder.

c) You are not preparing any rejection memo for such rejection.

d) **In this respect we are facing number of problem during NSDL/CDSL inspection and also problems from transferee to whom shares are returned.**

Our suggestion is as under :-

When the signature is rejected by the company, company must prepare rejection memo on the letter-head of the company duly signed by authorised officer of the company conveying that signature is mismatch for the reason as under :-

- Mismatch of signature of first/second/third holder.
- Signature full or short
- Signature is in Gujarati/English or otherwise.

We, therefore, request you to prepare the rejection memo and attach with Transfer Deed/DRF while returning the bunch of Transfer Deed/DRF sent for signature verification. If this memo is not attached we are receiving calls from proposed transferee/investor and unnecessarily they are visiting our office continuously.

You will please agree that when signature is verified at your end, we cannot prepare Rejection Memo for signature mismatch, on our letter-head.

4) ……

5) ……

6) **Handover of Signature Records:**

In case if you would like to handover the records, please contact our Shri Girish M. Patel, Dy. General Manager."
(emphasis supplied)

It is clear from the text of the letter that the most vital part of the share transfer activity had been left by the appellant to Parsoli and the request made in the letter is that in case the latter would like to handover the records, it could contact the representative of the appellant. We are satisfied from the tenor of the letter that the appellant had no intention of getting the signature records from Parsoli and it was happy transferring the shares blindly at its behest. It is further clear that this letter, too, would not have been written but for the intervention of the two depositories who seem to be then creating some problems for the appellant in the absence of signature records and the delay caused in dematerializing the shares. Parsoli for the first time, in response to the aforesaid letter, informed the appellant on August 16, 2005 that the signature records of the company were in torn condition and not properly maintained and for that reason they could not be handed over. The matter was allowed to be rested there and was never brought to the notice of the Board and the appellant went on transferring the shares without verifying itself the signatures of the transferors. It is, thus, clear that the appellant came to know that the signature records were in torn condition only in August, 2005 and without taking any steps before or after this date went on happily transferring the shares without verifying the signatures itself. The appellant not only abdicated its primary duty of signature verification to Parsoli but in this process shares were being transferred fraudulently without any let or hindrance. This can only lead us to infer that the appellant and Parsoli were acting hand in glove while fraudulently transferring the shares of genuine investors in the accounts of the promoters of Parsoli and their front entities. We are also satisfied that in the process, the appellant as an RTA failed to maintain even minimum standard of integrity let alone high standards of integrity in the matter of performing its vital share transfer functions.

8. There is yet another reason for us to hold that the appellant connived with Parsoli in fraudulently transferring the shares of genuine shareholders to the individual accounts

of promoters of Parsoli and their front entities. There are a number of instances where the requests for dematerialization from the genuine shareholders had been rejected by the appellant for the reason “signature mismatch” when those shares had already been transferred by the appellant to the individual accounts of third parties who were no other than the promoters of Parsoli or their front entities. If the appellant was acting bonafide, it should have informed the investors that the shares had already been transferred to third parties and could not be dematerialized. Instead of adopting this course, the appellant sent the requests for dematerialization to Parsoli for the verification of signatures and on receipt of information from the latter that there was mismatch of signatures, the appellant informed the investors accordingly. These instances have been referred to in para 12 of the impugned order which could not be seriously disputed. We may take note of one such instance briefly. One Arbab Ahmed Bharuchi held 1500 shares of Parsoli and his request for dematerialization made on July 14, 2005 was rejected by the appellant on August 17, 2005 on the ground of “signature mismatch”. However, his shares had already been fraudulently transferred around July 19, 2005 by the appellant to the account of Talha Sareshwala, a promoter of Parsoli and those shares had been dematerialized on August 13, 2005. Even if one were to assume that the request for dematerialization was directly sent by the DP to Parsoli, the appellant knew that the shares had already been transferred to a third party and, therefore, it had no business to inform the genuine shareholder that his request was being rejected on the ground of “signature mismatch”. It is a clear case of misrepresentation to the genuine shareholder for which the blame must rest with the appellant as RTA. Same is the position in the case of another genuine investor namely, Javed Sonalkar. The impugned order takes note of quite a few other instances which could not be disputed and we are pained to note that a large number of genuine and innocent shareholders were deprived of their investments only for the fraud played on them by Parsoli and the appellant. This false representation made by the appellant to the genuine shareholders clearly shows its collusion with Parsoli. We are in agreement with the whole time member that an RTA who is an interface between the shareholder and the company should, at the very least, ensure that no injustice is

perpetrated on the genuine shareholders and that the appellant miserably failed in achieving this primary goal.

9. We may now notice another interesting feature of the case. When quite a few genuine shareholders approached the appellant for dematerializing their shares, they were compensated by Parsoli by making off-market transfer of shares to their accounts from individuals related to Parsoli and their front entities. The appellant was aware of this unusual and strange act of Parsoli in compensating the shareholders who were about 250 in number from whom the shares had earlier been fraudulently transferred by its promoters. As an RTA, the appellant should have sought an explanation / verification from Parsoli but it remained passively silent. This also indicates its complicity with Parsoli.

10. There are other instances where the appellant rejected the request for dematerialization on a ground totally different from the one conveyed to it by Parsoli. Many requests of investors for dematerialization had been rejected by Parsoli and it conveyed to the appellant for onward communication to the investors that “Certificate received is already stands dematted in our system. Please contact company for further details”. The appellant, however, informed the investors a different reason stating that “the certificate submitted by the investors are those for which the duplicates have already been issued”. The appellant as RTA had records with it to show that no duplicate certificates had been issued and yet it communicated a wrong reason to the investors thereby acting to their detriment. The details of some of these instances have been referred to in para 30 of the impugned order and these were not seriously disputed before us. This conduct of the appellant is by itself fraudulent within the meaning of the FUTP Regulations for which the Board was justified in cancelling its certificate of registration.

11. There was also delay on the part of the appellant in dematerializing the shares of the investors. The Board has cited 10 instances where the delay ranged from 47 days to 257 days. The fact that there was delay in dematerializing the shares of some of the investors has not been disputed by the appellant. It is also not in dispute that the request for dematerialization is required to be processed within 15 days from the date of its

receipt. However, the appellant is putting the blame for the delay on Parsoli and states that in the interest of investors it was following up with Parsoli to get the signature confirmation at the earliest and that on receipt of such confirmation, it used to process the requests promptly. It further states that the delay in processing the requests was due to non-processing by Parsoli within the stipulated time. We cannot accept this explanation. The duty to process the requests for dematerialization within the stipulated period of 15 days solely rests with the RTA and it cannot be heard to say that the body corporate for which it was acting was causing delay in the processing. As already observed, it was the duty of the appellant as RTA to verify at its own end the signatures of the investors and ensure that there was no delay in processing the requests for dematerialization as they adversely affect the investors. The blame for the delay has to be borne by the appellant.

12. We may also notice another ground urged before us on behalf of the appellant. It is argued that the whole time member was not justified in issuing the supplementary show cause notice only to enhance the penalty as recommended by the enquiry officer. We do not find any merit in this argument. As already noticed, the enquiry officer in his report dated July 1, 2009 had recommended that the appellant be prohibited from taking up any new assignment or contract for a period of three years. It appears that on receipt of this report a show cause notice was issued to the appellant on the same day and thereafter the whole time member realised that in view of the gravity of the charges established against the appellant a higher penalty including cancellation of certificate of registration was called for. Hence he issued a supplementary show cause notice. We do not think that the appellant was prejudiced in any way and there is nothing wrong with this course of action. The original notice issued on May 4, 2009 did call upon the appellant to show cause why its certificate of registration be not cancelled. The procedure adopted was in accordance with Regulation 28 of the Intermediary Regulations and the supplementary show cause notice was justified on the ground that the charges established against the appellant in the enquiry report were extremely serious in nature.

13. We may now notice the argument of the learned senior counsel for the appellant regarding penalty. It was pointed out that the appellant has an impeccable track record

and that it is acting as an RTA for 120 companies managing close to 9.5 lac ledger folios. It is further stated on behalf of the appellant that it successfully handled 58 public issues and 16 rights issues and 10 open offers and that it made no gain from the alleged fraudulent transfers for which action has now been taken. On this basis it is argued that the extreme penalty of cancellation of certificate of registration is not justified and that it is disproportionate to the charges established against the appellant. According to the appellant, it is, at the most, guilty of negligence. It is contended that some lesser penalty could be imposed in the circumstances of the case. We cannot accept these submissions. All that is now being urged before us does not mitigate against the serious charges established against the appellant. It has not only aided and abetted Parsoli in fraudulently transferring the shares of the genuine investors as aforesaid but also failed in discharging its primary duties as a share transfer agent. Earlier the appellant goes out of the market the better it would be for preserving its integrity and safeguarding the interests of the investors. We do not think that any penalty less than cancellation of its certificate of registration would meet the ends of justice.

14. In view of the above, we have no hesitation in holding that the appellant by not maintaining the statutory records for the share registry and transfer work aided and abetted Parsoli in fraudulently transferring the shares of genuine investors to the accounts of the promoters of Parsoli and their front entities. This grave misdemeanour has been further compounded by the fact that the appellant gave false and misleading reasons to the genuine shareholders for rejecting their dematerialization requests and also for causing delay in processing such requests. We are, therefore, satisfied that all the charges levelled against the appellant stand established and that it has flagrantly violated the code of conduct. However, even if we ignore the nexus of the appellant with the alleged frauds committed by Parsoli and its promoters/front entities in transferring the shares of the genuine investors in their own individual accounts, the other glaring acts of commission and omission as noticed above would by themselves justify the cancellation of the certificate of registration of the appellant as an RTA. As already observed, the appellant had abdicated its primary function of signature verification to Parsoli and by not maintaining the statutory records it failed to perform the duties assigned to it by the

Regulations thereby betraying the trust and confidence reposed in it as an RTA. This apart, the appellant had been misleading the genuine investors time and again which is a serious breach of its code of conduct. We cannot resist observing that entities like the appellant should have no place in the securities market as they pose a serious threat thereto and cannot be trusted to safeguard the interests of investors which are paramount. No fault can, thus, be found with the impugned order.

15. Before concluding, we may observe that proceedings against Parsoli and its promoters are still pending and we fail to understand why the same could not be concluded before or atleast alongwith the proceedings against the appellant. That would have been a better course to adopt. However, we make it clear that all that has been said in our order is only for the purposes of disposing of the present appeal on the basis of the submissions made by the appellant and that nothing stated hereinabove shall prejudice the case of Parsoli or its promoters. We further make it clear that the Board shall proceed to decide the case against Parsoli and its promoters on its own merits without being influenced by any observation made hereinabove.

In the result, we answer the question posed in the opening part of our order in the affirmative and dismiss the appeal with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

30.4.2010
Prepared and compared by:
ddg/-, msb/-