

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT 1992, AGAINST M/S JANATA SAHAKARI BANK LTD, DEPOSITORY PARTICIPANT HAVING SEBI REGISTRATION NUMBER IN-DP-NSDL- 26-97.

1. M/s. Janata Sahakari Bank Ltd, Pune (hereinafter referred to as "the DP") is a State Co-Operative Bank included in the Second Schedule of the Reserve Bank of India act, 1934 (2 of 1934) and registered with Securities and Exchange Board of India (hereinafter referred to as "SEBI") under Certificate of Registration NO.INB IN-DP-NSDL-26-97, operating as such from June 1996, having registered office at 1444, Shukrawar Peth, Thorale Bajirao, Pune - 411 002.
2. Inspection of books of accounts of the DP was undertaken by a SEBI appointed CA firm, M/s. Batliboi and Purohit, during October-November, 2002. The following violations, deficiencies and lapses were observed during inspection:
 - A. **Account opening**
 - Opening beneficiary accounts despite SEBI's directions to the DP to not open any new accounts.
 - Opening beneficiary accounts without obtaining proper address proof.
 - Opening beneficiary accounts without obtaining proof of identity.
 - improper and incomplete documentation.
 - improper account holding patterns.
 - B. Improper issuance and execution of delivery instruction slips (DIS).
 - C. Delay in dispatch of dematerialization requests.
 - D. Mismanagement in handling investor grievances
 - E. Erroneous transfer
3. The observations and irregularities observed in the DP's operations were communicated to the DP vide letter dated January 14, 2003 and the DP was given a time period of 15 days to offer its comments on the inspection observations. The DP, vide its letter dated January 31, 2003 furnished its reply to the said observations.
4. After considering the submissions made by the DP, a show cause notice was issued to the DP on December 08, 2003, advising them to show cause as to why 'cease and desist' proceedings should not be initiated against them for the lapses and irregularities observed during the inspection. The following observations were made in the show cause notice :
 - i. The DP had accepted in their letter that they have opened beneficiary accounts without obtaining proper identity proof of the client, without obtaining address proof, thereby violating the provisions of SEBI circular no.SMDRP/Policy/CIR-36/2000 dated August 04, 2000.
 - ii. The DP had accepted the fact that they had opened beneficiary accounts with improper and incomplete documentation like, absence of signature of witness, accepting documents without verification with the originals and under the seal and signature of a participant's official, non authentication of the corrections on the agreement etc.
 - iii. SEBI had prescribed the procedure of issuance and execution of DIS to NSDL and CDSL vide letter dated June 06, 2000. However, it had been observed that the DP started following the said procedures only from August 2002.
 - iv. Instances were observed where the DP had issued the DIS booklets without taking the signature of both the account holders on the requisition slip and also cases where DIS were not stamped at the time of receiving at the counter. By not following the laid down procedures in issuance and re-issuance of DIS, investors were put to risk.
 - v. The DP had accepted that it was only after August 2000 that they had been processing and dispatching dematerialization requests within the stipulated time period and that prior to August 2000 there had been instances of delay in dispatching the dematerialisation requests.
 - vi. Rejection of dematerialisation requests on account of mistakes committed by the DP were to the extent of 25% of the total dematerialisation request rejections, which was on the higher side. Such mistakes erode the confidence of the investor and also lead to opportunity loss for the investor.

vii. It was observed that there was no effective customer redressal mechanism, as complaints were not recorded, complaints register was not maintained and correspondence pertaining to the same was filed only from August 2000, thereby violating the terms of regulation 20(2)(e) of Securities and Exchange Board of India (Depositories and Participants) Regulation, 1996.

5. The DP was advised to send its reply to the said show cause and also indicate if it desired a personal hearing before the competent authority. A reply to the show cause notice was received from the DP vide letter dated December 19, 2003.
6. The DP, in its reply, submitted that they agreed that there were certain shortcomings and compliances to be fulfilled in specific areas, but that according to them these lacunae were not rampant. The DP sought an opportunity for a personal hearing and further stated as follows:
 - a. procedural lapses were immediately attended and complied well in time,
 - b. documentation of address proof and identity were on the bank records, as the depository clients were existing bank customers only,
 - c. the bank had introduced "check list" approach to safeguard interests of the investors,
 - d. they had observed due diligence in completion of legal procedures,
 - e. they had introduced "time stamping" method to safeguard the holding and interest of the investors,
 - f. they had upgraded skills and manpower number and introduced external audit system for the DP operations,
 - g. that complaints were attended to in all seriousness, as confirmed by the team of auditor, though they was no structured maintenance of systematic book for the same.
6. An opportunity of personal hearing was given to the DP on 11.02.2004. The DP requested for another date and accordingly, the hearing was scheduled for 16.03.04. On the said date, the DP made its submissions before me. The DP was also directed to submit its latest audit report. I find that adequate opportunity of hearing was given to the DP in adherence to the principles of natural justice.
7. I have gone through the inspection report, the show cause notice, the reply of the broker and the material available on record and I have observed as under.
- 8.1 With regard to the allegation that the DP had opened beneficiary accounts without obtaining proper identity proof of the client, without obtaining address proof and had thereby violated the provisions of SEBI circular no. SMDRP/Policy/Cir-36/2000 dated 04.08.2000, the DP contended that they had introduced 'check list approach' to safeguard interests of the investors. DP also enclosed a copy of the checklist for immediate reference and stated that it was scrupulously followed. DP assured that all these documentations were properly ensuring safe, secured and efficient functioning of the depository system.
- 8.2 I find that the DP had introduced 'check list approach' only after the lapses were pointed out by SEBI. Documents which were not available as a part of account opening form for the beneficiary account were later included therein, purportedly from the bank account opening form of the beneficial owners. Account opening is the first interface between the investor and the participant and is a critical step in ensuring the safety, integrity and efficient functioning of the depository system. It is important that depository participants adopt a "check list approach" to safeguard their interests. By not exercising caution and by not acting diligently, the DP has failed in following the laid down procedure and has not complied with the instructions, thereby putting to risk the safety and efficient functioning of the depository system. Therefore, I hold the DP guilty of opening accounts in violation of SEBI Circular cited above.
- 9.1 With regard to the allegation that the DP had opened beneficiary accounts with improper and incomplete documentation like absence of signature of witness, accepted documents without verification with originals etc., the DP submitted that they exercised proper care and taken effective steps towards observing due diligence in completion of legal procedures, as set out in the system. They also submitted that they have been able to establish absolute faith and trust in the investors and that their sustained growth speaks of this support.
- 9.2 From the above submissions, I find that the DP did not deny the violation alleged against them. Opening of beneficiary account by following incomplete procedure will result in misuse of depository system. Proper documentation is critical for ensuring completion of legal procedures, which is an integral part for safeguarding the depository system. Depository Participants, being service providers on behalf of the depositories, have to be extra vigilant and careful, thereby safeguarding own interests as well as the interests of their clients and of the depository system as a whole. I therefore hold the DP guilty of opening Beneficiary Accounts improperly in violation of SEBI circular dated 04.08.2000.

10. With regard to the allegation that the DP started following the guidelines relating to re-issuance and issuance of loose debit instructions slips (DIS) only from August 2002, whereas guidelines and procedures for the same were required to be followed with effect from 06.06.2000, the DP submitted that Depository Participants Module (DPM) of NSDL did not possess any built in facility to register debit instruction slips (DIS). DP submitted that they nonetheless introduced systems of "time stamping" method which safeguards the holding and interest of the investors. They confirmed that they had added support of their back office software which took due care of this aspect.
- 10.2 It was also observed by the Auditors that on many occasions the DIS of the investors were accepted at the counter of the DP, without time stamping. Issuance, reissuance of debit instruction slips is a critical step in the depository process in ensuring the safety of the investors holding with the participants. Numbering and time stamping provide audit trails regarding the delivery/debit instruction slips issued by the DP and prevents misuse /abuse of the slips. By not following the laid down procedures in issuance and re-issuance of the debit instruction slips, the investors holdings have been put to risk. I find that the reply of the DP is not convincing and I find DP guilty of the above violation.
- 11.1 With regard to the charge that processing and dispatching the dematerialisation requests, within the stipulated time period, was being done by the DP only from August 2002, the DP stated that they had forwarded almost 263000 DRFs satisfactorily, which indicated their sincere attendance to maintain service quality. They further submitted that they had taken certain initiatives to further enhance the excellence in providing services, by upgrading skills and manpower number as well, introduced external audit system and tightened accountability of jobs.
- 11.2 I note that the Auditors had observed that rejection of demat requests on account of mistakes committed by the DP were to the extent of 25% of the total dematerialisation of shares. Any delays in dematerialisation of shares, especially those caused on account of the DP's mistakes, erode the confidence of the investors in the depository system and may also result in opportunity loss to the investor.
- 12.1 With regard to the allegation that complaints were not recorded, complaints register was not being maintained and that correspondence pertaining to the same was being filed only from August 2002 onwards, the DP stated that although they did not have structured maintenance of systematic book, all the complaints were attended to in all seriousness. The DP contended that the the same was confirmed by the team of auditors too, and that the redressal mechanism was well oriented. The DP stated that the customers were totally satisfied with the service levels and that consistent growth rate of the DP business supported building up of loyalties.
- 12.2 The auditors had observed that prior to June 2000, there were no records of complaints, there was no inwarding system for complaints received, no complaints register was being maintained and correspondence pertaining to complaints were not filed. In terms of Regulation 20(2)(e) of SEBI (Depositories Participants) Regulations, 1996, the depository participant is required to redress the grievances of beneficial owners within 30 days of the date of the receipt of the complaint and keep the depository informed about the number and the nature of redressal. For complying with the above said regulations and having an effective redressal mechanism, it is necessary for the participant to have and maintain proper books, records and filings of the complaints and correspondence pertaining the same. I find that the DP had admitted that they did not maintain structured and systematic books regarding complaints.
13. Upon considering all the facts of the case, I agree with the findings of the inspection report that the DP entity has been lax in the implementation of the relevant SEBI Regulations, circulars, NSDL guidelines etc. governing the conduct of depository participants. I have seen that the DP has been negligent in maintaining proper records and documents, has not adhered to the prescribed procedures, delayed demat requests, erroneously transferred securities etc, thereby putting to risk the interest of the beneficiary owners having demat account with the DP. Being a custodian of the clients' securities, there is an obligation on the DP to act in a responsible manner, failing which serious losses may accrue to their clients.
14. Upon considering all the facts of the case, I agree with the findings of the inspection report that the DP had violated the provisions of SEBI circulars SMDRP/Policy/Cir-36/2000 dated August 04, 2000, & SMDRP/Policy/Cir-36/2000 dated August 04, 2000 and Regulation 20 of SEBI (Depositories & Participants) Regulations, 1996. These violations do not augur well for the securities market, as in a demat environment, a DP plays a crucial role and any systemic deviation will expose the investors to avoidable and unforeseen risks, which would not be conducive to the orderly development of the market. Hence, I am of the view that it is a fit case for issue of directions against the DP, whose conduct as a depository participant has been observed to be not up to the standards expected of a responsible entity in the securities market.
15. Therefore, in the interests of investors and to safeguard the integrity of the securities market, in exercise of powers conferred upon me by Section 19 read with Sections 11 and 11D of the Securities and Exchange Board of India Act, 1992, I hereby direct M/s.Janata Sahakari Bank Ltd, holding Certificate of Registration No. IN-DP-NSDL-26-97, to cease and desist from repeating any of the lapses enumerated above and the violations found to have been committed by them. Any future violation would be viewed seriously.
16. This order shall come into effect immediately.

Place: Mumbai
Date: October 15, 2004

A K Batra
Whole Time Member
Securities and Exchange Board of India