

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: T. C NAIR, WHOLE TIME MEMBER

AGAINST MCS LIMITED.

DATE OF HEARING: JUNE 27, 2008

APPEARANCES:

FOR THE NOTICEE:

Shri Aniruddha Mitra : Whole Time Director

Shri Ramesh Agarwal: Advisor

FOR SEBI:

Shri Suresh B Menon: General Manager

Shri Deewan Policarp Samad: Manager

Shri Manshoor Nazki: Legal Officer

ORDER

**[UNDER SECTION 11 READ WITH SECTION 11B OF THE SECURITIES
AND EXCHANGE BOARD OF INDIA ACT, 1992]**

1. MCS Limited (hereinafter referred to as MCS) is registered as a Registrar and Share Transfer Agent (RTA) with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI'). SEBI has been receiving several complaints from various companies wherein the complainants have alleged unprofessional conduct on part of MCS whenever an issuer company gives notice for termination of the

agreement with MCS and thereby indicates its intention to shift to another RTA.

2. SEBI had been forwarding the complaints from the issuer companies to MCS for redressals. All the companies had alleged that MCS had refused to hand over the records/data to them or their newly appointed RTA within the prescribed time-frame. The details of the complaints referred to above are as follows:

Serial Number	Date of letter forwarded by SEBI	Name of the Complainant
1	25/10/2007 and 30/10/2007	Varun Shipping Company Limited
2	12/09/2007	Gujarat Gas Company Limited
3	11/07/2007,25/07/2007,14/08/2007 and 13/09/2007	Union Bank of India
4	27/06/2007	Tantia Constructions Limited
5	19/06/2007 and 17/09/2007	Spentex Industries Limited (Indo-Rama Textiles Limited)
6	04/05/2007	LIC Mutual Fund Asset Management Company Limited
7	04/01/2008	Dabur India Limited

3. In addition to the companies listed above, two other companies viz, Universal Starch Chem Allied Ltd and Apeejay Tea had complained alleging MCS's exorbitant demands at the time of the termination of their agreement with MCS and handing over the data/records. These complaints were forwarded to MCS for redressals by SEBI vide letters dated June 19, 2007 and December 14, 2006 but no reply was received.

4. Pursuant to the non-redressal of the above mentioned complaints, SEBI issued a Show Cause Notice dated March 17, 2008 (hereinafter referred to as 'SCN') to MCS under Section 11(1) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'). The SCN was issued after taking into consideration the fact that the records/data with MCS were not transferred back to the issuer company or its new RTA even after the termination of agreement or such transfer was not made within the prescribed time period, that the No Objection was not issued to the Depository for shifting of the RTA functions and that such a situation would be harmful to the interest of the investor.

5. The SCN had called upon MCS to show cause as to why action under Section 11(1) and 11B of the SEBI Act should not be taken against it for violating the provisions of Clauses 1, 2 and 23 of the Code of Conduct specified in Regulation 13 of the Securities and Exchange Board of India (Registrar to an Issue and Share Transfer Agents) Regulations, 1993 (hereinafter referred to as 'Regulations'). Clauses 1, 2 and 23 of the Code of Conduct under Regulations 13 of the Regulations provide:

“1. A Registrar to an Issue and share transfer agent shall maintain high standards of integrity in the conduct of its business.”

“2. A Registrar to an Issue and share transfer agent shall fulfill its obligations in a prompt, ethical and professional manner.”

“23. A Registrar to an Issue and share transfer agent shall handover all the records/data and all related documents which are in its possession in its capacity as a Registrar to an Issue and/or share transfer agent to the respective clients, within one month from the date of termination of agreement with the respective clients or within one month from the date of expiry/cancellation of certificate of registration as Registrar to an Issue and/or share transfer agent, whichever is earlier.”

6. The complaints, which had been forwarded to MCS upon receipt by SEBI and also forwarded along with the Show Cause Notice largely contained the following allegations:

- a. Refusal to handover records to the issuer after the termination of agreement;
- b. Non-issue of no-objection certificate (NOC) to the Depositories regarding the transfer of the records/data to either the issuer or the new RTA.
- c. Making unreasonable and untenable claims for exorbitant fees and refusing to transfer data/issue No-Objection until such demands were met.

7. In reply to the SCN, MCS made the following submissions:

- a. That except for Varun Shipping Company and Dabur India Ltd. they had issued NOC to all other companies whose names were mentioned in the SCN.
- b. That they had no intention of withholding the documents and the documents and NOC will be issued without any delay on receipt

of their total dues from Varun Shipping Company Ltd and Dabur India Ltd.

c. That with respect to Varun Shipping Company Ltd they do not have documents pending with them since all documents have been already handed over.

d. That as regards Dabur India Ltd, the company has referred the matter to Delhi High Court and the same is sub-judice, but the Registrar Services are being given to their shareholders without any interruption and no grievance of investors is pending.

8. Thereafter, a personal hearing was given to MCS on June 27, 2008. The limited but equally important question that comes up for consideration is whether an RTA can refuse to transfer data/issue NOC citing non-payment of dues by the issuer as a valid reason. It is an admitted fact by MCS, as seen from their reply to the SCN, that the reason they have not issued the NOC with respect to Varun Shipping Company Ltd and Dabur India Ltd. is because they have not received their total dues from these issuers.

9. Under the SEBI Act, the duty has been cast upon SEBI to promote the interest of investors in securities and to promote the development of, and to regulate the securities market. An important tool through which such duty is performed is by formulating Regulations which are instrumental in ensuring that the market is regulated in a manner which is beneficial for investors without sacrificing uniformity and development. MCS has, admittedly, failed to transfer the data, records/issue NOC within the prescribed time period of one month from the date of termination of agreement. This is in clear violation of Regulations 13 of the Regulations. The reason as given by the MCS in

their reply to the SCN and in their oral submissions is that the issuers had failed to pay the total outstanding dues to them. The question as to whether such demands by MCS regarding outstanding dues are justified or not is a subject matter of dispute resolution and therefore outside the purview of this proceeding. This proceeding is limited to the conduct of MCS as regards the compliance of the law (Regulations) is concerned.

10. In its reply to the SCN, MCS had stated that they have issued the NOC to all the Companies which were mentioned in the SCN, except for Varun Shipping Company Ltd and Dabur India Ltd. It is seen from the complaints and the statements, both written and oral, of issuers and MCS that the same was not done within the prescribed time period of one month.

11. Therefore, it is clear that MCS Ltd has violated the Regulations and by doing so has put the interest of the investors in jeopardy. Non-transfer of data, records/non issue of NOC has a harmful effect on the entire dematerialization process and the confidence of the investors in the system is diminished.

12. Therefore, in light of the above, I find that MCS Ltd. has violated Regulation 13 read with Clause 1, 2 and 23 of the Code of Conduct of the Securities and Exchange Board of India (Registrar to an Issue and Share Transfer Agents) Regulations, 1993. It is hereby directed that MCS Ltd. shall, within a period of 10 days from the passing of this order, transfer all the data/records and issue No Objection to the Depository with respect to all the companies mentioned in the show cause notice, if not already done, failing which strict action will be taken

against it in terms with the Securities and Exchange Board of India Act and the rules and regulations framed thereunder. It is left open for MCS Ltd to seek resolution of their dispute with the issuers, if any, at an appropriate forum.

13. This order shall come into force with immediate effect.

Place: Mumbai

Date: August 11, 2008

T.C Nair

Whole Time Member

Securities and Exchange Board of India