FINAL ORDER

BEFORE WHOLE TIME MEMBER (LAW) AND MEMBER AUTHORIZED TO IMPOSE PENALTY

Under Sections 30, of the PFRDA Act, 2013 and PFRDA (Procedure for Inquiry by Adjudicating Officer) Regulations, 2015

IN THE MATTER OF ALANKIT ASSIGNMENTS LTD. & ORS.

(Case No. PFRDA/17/06/16/0010/2017-SUP-AGGR)

1. Alankit Assignments Ltd.

Alankit House, 4E/2,

Jhandewalan Extension,

New Delhi – 110055 **…Noticee No. 1**

2. Shri Alok Agarwal,

CEO & Director,

Alankit Assignments Ltd.,

Alankit House, 4E/2,

Jhandewalan Extension,

New Delhi – 110055 **…Noticee No. 2**

3. Shri Mukesh Chandra Agarwal,

Wholetime Director,

Alankit Assignments Ltd.,

Alankit House, 4E/2,

Jhandewalan Extension,

New Delhi – 110055 **…Noticee No. 3**

4. Shri Yashjeet Basrar,

Wholetime Director,

Alankit Assignments Ltd.,

Alankit House, 4E/2,

Jhandewalan Extension,

New Delhi – 110055 **…Noticee No. 4**

5. Shri Harish Chandra Agarwal,

Executive Director / Compliance Officer,

Alankit Assignments Ltd.,

Alankit House, 4E/2,

Jhandewalan Extension,

New Delhi – 110055 **…Noticee No. 5**

CORAM

Shri Pramod Kumar Singh

Whole Time Member (Law)

and Member authorized to

impose penalty

ORDER

1. INTRODUCTION

1.1. The present order is being passed in pursuance to the order of the Securities Appellate Tribunal (SAT) dated 15.02.2021 in the matter of *Alankit Assignments Ltd. & Ors.* v. *Pension Fund Regulatory and Development Authority* (PFRDA Appeal No. 3 of 2019).

1.2. SAT in its aforementioned order directed the Authority to reconsider the matter in the light of the observations made by SAT in the order.

2. BACKGROUND

2.1. Pension Fund Regulatory and Development Authority (PFRDA/ the Authority) is a statutory authority established under Section 3 of the Pension Fund Regulatory and Development Authority Act, 2013 (PFRDA Act, 2013) notified w.e.f. 01.02.2014 to be a model regulator for promotion and development of an organized pension system to serve the old age income needs of people on a sustainable basis and to regulate the National Pension System (NPS) and other pension schemes mentioned therein.

2.2. Alankit Assignments Limited (Noticee No. 1) was registered as a Point of Presence (PoP) on 10.03.2010 for a period of five years. Further, Noticee No. 1 was registered as an Aggregator on 24.11.2010 for a period of three years which was further extended on 04.02.2014 and 20.11.2014.

2.3. The Authority in exercise of its power under Section 52 of the Act notified PFRDA (Point of Presence) Regulations, 2015 (PoP Regulations) and PFRDA (Aggregator) Regulations, 2015 (Aggregator Regulations). Post notification of the said Regulations, Noticee No. 1 applied for renewal of certificate of registration for PoP and Aggregator on 20.05.2015 and 09.07.2015, respectively. However, during pendency of the said applications, the Authority received complaint on 16.10.2015 that NPS Lite customers were being cheated by one Mr. B. Vijay Kumar Reddy. Further, during the fact-finding process of the Authority it was found out that the Noticee No. 1 was having association with Mr. B. Vijay Kumar Reddy. He was using NPS Lite Collection Center (NLCC)/ Point of Presence - Service Provider (POP-SP) Code which was allocated to Noticee No. 1. Moreover, he had deposited contributions of subscribers to the NPS-Lite collection account of Noticee No. 1.

2.4. The Authority issued a show cause notice on 16.03.2016 followed by another show cause notice on 20.10.2017 seeking explanation from Noticee No. 1 with respect to the complaints received against Mr. B. Vijay Kumar Reddy and his association with Noticee No. 1.

2.5. After the reply of Noticee No. 1, the Authority decided to initiate adjudication proceedings against Noticees for violation of provisions of the PFRDA Act and Regulations. After adjudication, the Adjudicating Officer recommended a penalty of Rs. 9,00,590/- (Rupees nine lakhs five hundred and ninety only), where penalty of Rs. 4,00,590/- (Rupees four lakhs five hundred and ninety only) was imposed on Noticee No. 1 on account of delay in upload of Subscriber Contribution Form ("SCF") and delay in remittance of funds to the Trustee Bank and a penalty of Rs. 1,00,000/- (Rupees one lakh only) was imposed on each of the Noticees on account of the repetitive nature of the defaults on the part of the Noticees.

2.6. The Whole Time Member (Finance) and Member-in-charge of imposition of penalty passed an order on 02.01.2019 holding the Noticees liable under all the charges, thus, confirming the recommendations of the Adjudicating Officer. Further, the review application of the Noticees were rejected by the Chairman, PFRDA on 21.02.2019.

2.7. The application of Noticee No. 1 for renewal of certificate of registration for PoP and Aggregator were rejected by the Authority on 21.02.2019.

2.8. The Noticees filed Appeal No. 3 of 2019 whereby the order of the Whole Time Member imposing penalty on the Noticees for violation of the provisions of the Act and Regulations was challenged.

2.9. SAT in its order dated 15.02.2021 allowed the said Appeal and quashed the impugned order dated 02.01.2019 passed by the Whole Time Member and Member authorized to impose penalty with the following observations, referring to the Circular no. CRA/PO&RI/FC/2012/012 dated 04.12.2012 issued by the National Securities Depository Limited (NSDL Circular, 2012) and Circular no. PFRDA/2015/20/APY/1 dated 27.07.2015 issued by PFRDA (APY Circular, 2015):

> "*46. We are of the opinion that non consideration of the aforesaid two Circulars which goes to the root of the matter with regard to the time line for uploading of the SCF and transfer of funds to the trustee bank vitiates the impugned order. If these two Circulars are considered the finding relating to the alleged delay in the uploading of the SCF and in the remittance may not happen or may get drastically reduced.*
>
> *47. Consequently on this short ground, we are of the opinion that the impugned order cannot be sustained and it not necessary to go into the other issues raised in the show cause notice or the AO"s report or in the impugned order. In view of the aforesaid, the impugned order cannot be sustained and is quashed.*
>
> *48. For the reasons stated aforesaid, the impugned order dated 21st February, 2019 in appeal no.1 of 2019, impugned order dated 21st February, 2019 in appeal no.2 of 2019 and the impugned order dated 2nd January, 2019 in appeal no.3 of 2019 cannot be sustained and are quashed. All the appeals are allowed. The matter is remitted to the authority to decide the applications for grant of registration afresh and if it is unable to grant the registration of certificate it will grant conditional registration which would be subject to the outcome to the penalty proceedings. The Designated Member/WTM is*

directed to reconsider the matter in the light of the observations made aforesaid. In the circumstances of the case, parties shall bear their own costs."

3. HEARING NOTICE, PERSONAL HEARING AND REPLY

3.1. A Hearing Notice dated 02.09.2021 was issued to the Noticees under Section 30 of the Pension Fund Regulatory and Development Authority Act, 2013 read with Regulation 11 and 12 of the Pension Fund Regulatory and Development Authority (Procedure for Inquiry by Adjudicating Officer) Regulations, 2015. In the interest of justice, an opportunity of personal hearing was granted to the Noticees on 23.09.2021.

3.2. The personal hearing was attended by Shri Abhishek Kumar, Advocate and Shri Kamal Garg, Deputy General Manager, Alankit Assignments Ltd. representing Noticee No. 1, Noticee No. 3, Noticee No. 4 and Noticee No. 5. Shri Alok Agarwal, Noticee No. 2, represented himself in personal capacity.

3.3. The Noticees were also provided an opportunity to file their written submissions by 08.10.2021 which was further extended to 28.10.2021 based on the request of the authorized representatives of the Noticees dated 07.10.2021. The written submission was filed by the Noticees on 28.10.2021.

4. ISSUE UNDER CONSIDERATION

4.1. The limited issue under consideration in the present matter is whether the NSDL Circular, 2012 and APY Circular, 2015, if found applicable in the facts and circumstances of the present case, would alter the findings of the Adjudicating Officer and the order dated 02.01.2019 of the Whole Time Member (Finance) and Member-in-charge of imposition of penalty.

5. ARGUMENTS OF THE NOTICEES

5.1. The Noticees submitted that the imposition of penalty on account of delay in upload of SCF and delay in remittance of funds to the Trustee Bank under the Regulations for Aggregators under NPS-Lite, 2010 is not maintainable and was made in complete contravention of the applicable Regulations and in ignorance of the NSDL Circular, 2012 which revised the Turn Around Time (TAT) for processing regular NPS and NPS Lite forms and the APY Circular, 2015.

5.2. It was further argued that the alleged violations on which penalty had been recommended were for the period of 30.12.2013 to 04.02.2015 during which Regulations for Aggregators under NPS-Lite, 2010 were applicable. Therefore, PFRDA (Aggregator) Regulations, 2015 shall not be applicable for these alleged violations. Further, the Noticees did not violate any guidelines of the Regulations for Aggregators under NPS-Lite, 2010.

5.3. The Noticees submitted that the contributions of the subscribers can be uploaded only after Permanent Retirement Account Number (PRAN) is generated by the Central Recordkeeping Agency (CRA) as it is the only identity of the subscribers. Therefore, only after PRAN is issued an aggregator can upload SCF on the CRA system and make corresponding remittance.

5.4. It was also submitted that the NSDL Circular, 2012 modified TAT for generation of PRAN. The Noticees relied on the said Circular to further argue that *"T" meant the date of receipt of generation of receipt provisional/temporary by the CRA-FC Acceptance Centre, namely generation of PRAN, i.e. to say the time starts from the date of receipt generation of the subscribers' number (PRAN)*.

5.5. The Noticees in their written submissions submitted that *the Company uploaded the SCF within T+4, i.e. Date of Generation of PRAN + 4 days and remitted the funds to the Trustee Bank with within T+5 (excluding Saturdays and Sundays), i.e. Date of Generation of PRAN + 5 days (excluding Saturdays and Sundays and bank holidays)*.

5.6. The Noticees further submitted that the Adjudicating Officer considered "T" as the date on which the subscriber visited the center and the receipt was generated, however, the Adjudicating Officer should have considered date of generation of PRAN as "T". The Noticees submitted that the Authority (PFRDA) in the APY Circular, 2015 had defined "T" as the date of generation of PRAN. The Noticees in their oral submissions had argued that if the two Circulars were considered then the number of instances where SCF upload was delayed would decrease from 5,781 to 32. Likewise, the number of instances where remittance transfer was delayed would decrease from 5,554, to 155. However, in their written submissions, the Noticees turned around and argued that if the two Circulars are considered then no delay will be stablished in the uploading of SCF and in the remittances.

5.7. The Noticees also submitted that the Adjudicating Officer levied penalty based on notional loss and not the actual loss suffered by any subscriber. Further, no complaint or evidence on record is available to establish that the subscribers suffered loss due to the alleged delay. Moreover, they submitted that any delay in uploading of SCF and in the remittances was due to delay in generation of PRAN by CRA.

5.8. The Noticees also challenged the basis of calculation of notional loss and argued that there was no provision in the Regulations for Aggregators under NPS-Lite, 2010 or the Operational Guidelines for Aggregators which provided any provision for rate of imposition of penalty. Further, the Noticees submitted that Para 13 of the Regulations for Aggregators under NPS-Lite, 2010 provided PFRDA with the power to lay down provisions for imposition of penalty but no such provisions were made by the Authority.

5.9. The Noticees also submitted that the Authority cannot impose penalty on Noticee 2 to Noticee 5 under Section 28(4) of the PFRDA Act as they are not registered intermediaries of PFRDA. Further, the Noticees submitted that the Noticee 2 to Noticee 5 cannot be held liable under Section 50 of the PFRDA Act as the said noticees are only responsible for taking broad policy decisions and the day-to-day affairs of the Company is looked after by qualified executives who are appointed by the Company from time to time for conducting its business.

5.10. The Noticees finally submitted that all the guidelines were followed by the Noticees and thus, no penalty can be imposed by the Authority.

6. CONSIDERATION OF ISSUES AND FINDINGS

6.1. I have carefully examined material on record as well as submissions made by the Noticees in their oral submissions on 23.09.2021 along with the written submissions filed on 28.10.2021.

6.2. The present proceedings were conducted in compliance with the order of SAT dated 15.02.2021 whereby SAT directed the Whole Time Member and Member authorized to impose penalty *to reconsider the matter in the light of the observations made therein*, i.e. whether the findings in respect of delay in the uploading of the SCF and in the remittance of the contribution of subscribers would hold if the Adjudicating Officer and the Member Authorized to Impose Penalty would have considered the NSDL Circular, 2012 and the APY Circular, 2015.

6.3. In the present matter, the primary argument of the Noticees is that the order of the Member Authorized to Impose Penalty dated 21.02.2019 is not maintainable as the Adjudicating Officer as well as the Member failed to take into consideration the NSDL Circular, 2012 which had modified the time period within which Noticee No. 1 was expected to upload SCF and remit contribution of the subscribers to the Trustee Bank.

6.4. Noticee No. 1 was first issued certificate of registration under Regulation for Aggregators under NPS-Lite 2010. Annexure II of the Guidelines in supplement to "Regulation for Aggregators under NPS Lite-2010" provided conditions for remittance of subscriber contribution amount to NPS Account. According to the said clause, "*Data in respect of contributions collected during the week must be uploaded on the CRA system on Friday before EOD. Corresponding remittances must be credited to the NPS account held with Trustee bank by the next Monday.*" The said clause, thus, prescribed timelines for uploading of SCF and remittances of contribution of the subscribers to their NPS account. The Adjudicating Officer has relied on the aforementioned clause to consider a Turn Around Time (TAT) for SCF upload to be T+4 and for remittance of contributions of the subscribers to the NPS account as T+5 (excluding Saturday, Sunday and bank holiday) which was the maximum TAT prescribed by the aforementioned clause. The Noticees have argued that the said timelines were effectively modified by the NSDL Circular, 2012. The Noticees have argued that the NSDL Circular, 2012 had revised TAT prescribed to Central Recordkeeping Agency-Facilitation Centre (CRA-FC) with respect to processing of PRAN Application Forms during Peak (months of March and April) and Non-Peak (months other than March and April) period, thus, modifying the timeline for uploading of SCF and remittance of contribution of the subscribers to the NPS account. This argument was based on the rationale that an Aggregator cannot perform its function of SCF upload and remittance of contribution of subscribers without processing of PRAN Application Form and creation of NPS account.

6.5. In the present matter, it is pertinent to consider information and fund flow in the NPS architecture before considering the arguments of the Noticees. According to the Regulations for Aggregators under NPS-Lite 2010, an Aggregator shall collect cash or cheque, as the case may be, from the subscriber and issue a physical receipt as a form of acknowledgement. At the same time the Aggregator shall send verified NPS Application Form to CRA-FC for digitization, processing and generation of PRAN. Further, the Aggregator would prepare and upload SCF in CRA-Lite system and accordingly transfer funds to Trustee Bank. Even assuming that NSDL Circular, 2012 had changed the timeline for the activities to be undertaken by the Aggregator, the argument of the Noticees can at best be said to be valid only vis-à-vis the new subscribers where PRAN is yet to be generated.

6.6. In case of existing subscribers, i.e. subscribers with existing PRAN, the NSDL Circular, 2012 shall not modify the timeline for SCF upload and remittance of contributions of the subscribers. Thus, in cases where the Aggregator collected contributions from an existing subscriber, the same should have been processed in accordance with Annexure II of the Guidelines in supplement to "Regulation for Aggregators under NPS Lite-2010". Thus, in case of existing subscribers *Data in respect of contributions collected during the week must be uploaded on the CRA system on Friday before EOD. Corresponding remittances must be credited to the NPS account held with Trustee bank by the next Monday.*".

6.7. In the light of the above observations and two Circulars referred in the order of the SAT, the Noticees were asked to submit, before the undersigned, all the transactions under consideration for the period subject to the investigation along with the date of PRAN generation, SCF upload and remittance of contribution of the subscribers. Despite acceding to the said instruction no such submission has been made by the Noticees till date. The undersigned is of the view that the facts and evidences available on record are not sufficient to adequately examine the submissions of the Noticees in light of the Circulars referred in the order of the SAT. Further, the failure of the Noticees themselves to submit the relevant information as was sought by the undersigned has constrained the undersigned from examining the issue in its totality. Therefore, the undersigned is of the view that a relook of all the transactions under consideration in the light of relevant Circulars including the Circulars referred in the order of the SAT, if found applicable, for the period subject to the investigation needs to be re-examined by the Authority under the first proviso of Regulation 11(3) of the PFRDA (Procedure for Inquiry by Adjudicating Officer) Regulations, 2015.

6.8. Thus, the Authority shall get the impugned transactions in the present matter examined in the light of relevant Regulations/Circulars including the Circulars referred in the order of the SAT and the arguments advanced by the Noticees that the timeline for SCF upload and remittance of contributions of the subscriber has been modified which in turn will either reduce number of delays significantly or no such delay will be established.

7. ORDER

7.1. Having considered all the facts and circumstances of the case, the material available on record and the submissions made by the Noticees, I, in exercise of the powers conferred upon me under Section 30 of the PFRDA Act read with Regulation 11(3) of the PFRDA (Procedure for Inquiry by Adjudicating Officer) Regulations, 2015 hereby direct the Authority for a fresh inquiry in the issue of delay in SCF upload and remittance of contributions of the subscriber in light of relevant Regulations/Circulars including the Circulars referred in the order of the SAT and the arguments advanced by the Noticees.

7.2. In terms of the provisions of Regulation 12 of the PFRDA (Procedure for Inquiry by Adjudicating Officer) Regulations, 2015, a copy of this order is being sent to the Noticees and also to PFRDA.

-sd-

Pramod Kumar Singh

Whole Time Member (Law) and Member authorized to impose penalty

Date : 02.05.2022

Place : New Delhi