# FINAL ORDER

**BEFORE WHOLE TIME MEMBER (LAW) AND DESIGNATED MEMBER FOR IMPOSITION OF PENALTY**

**Under Section 30 of the PFRDA Act, 2013 and Regulation 11 of the PFRDA (Procedure for Inquiry by Adjudicating Officer) Regulations, 2015**

**IN THE MATTER OF ADJUDICATION PROCEEDINGS AGAINST KARVY COMPUTERSHARE PRIVATE LIMITED (NOW K-FIN TECHNOLOGIES PVT. LTD.)**

**(Case No. 2 of 2021)**

**1. Karvy Computershare Private Limited (Now K-Fin Technologies Pvt. Ltd.)**
Karvy Selenium Tower-B,
Plot No. 31&32, Gachibowli,
Financial District
Nanakramguda,
Serilingampally, Hyderabad, Rangareddi,
Telangana, India - 500032 …**Noticee**

**CORAM**
**Shri P.K.Singh**
Whole Time Member (Law) and
Member in charge of Imposing Penalty

## ORDER

## BACKGROUND

1. The present proceeding is originating from the Inquiry Report dated January 12, 2021 submitted by the Adjudicating Officer (hereinafter referred to as "**AO**") in terms of the Pension Fund Regulatory And Development Authority (Procedure For Inquiry By Adjudicating Officer) Regulations, 2015 (hereinafter referred as "**the Inquiry Regulations**"), wherein the AO, based on various factual findings and observations so

recorded in the said Inquiry Report, has noted that after considering the material on record, there are not sufficient evidence available which could warrant punitive action (including imposition of penalty) in the matter.

2. Consequently, the AO has not made any recommendation for any action against Karvy Computershare Pvt. Ltd. (Now K-Fin Technologies Pvt. Ltd.) (hereinafter referred to as "**Noticee**"), registered as Central Recordkeeping Agency ("**CRA**") with PFRDA and has submitted his report ("**Inquiry Report**") with a recommendation of "*no imposition of penalty*". However, the member in charge of investigation and surveillance ("**Designated Member**" or "**DM**") in his recommendation dated 27th January, 2021 (hereinafter referred to as "**DM Recommendations**") stated that the Noticee has violated provisions of Pension Fund Regulatory and Development Authority Act, 2013 ("**PFRDA Act**") and Pension Fund Regulatory and Development Authority (Central Recordkeeping Agency) Regulations, 2015 (hereinafter referred to as "**CRA Regulations**"), and merit of the case demands that penalty should be imposed upon Noticee.

3. The aforesaid Inquiry was initiated pursuant to a fact-finding exercise conducted by the Pension Fund Regulatory and Development Authority (hereinafter referred to as "**PFRDA**" or "**Authority**") upon receiving a letter from NPS Trust, dated July 25th, 2018, regarding a fraudulent processing of death claim of a living subscriber Ms. Jaya Jayant Banavaliker under the National Pension System ("**NPS**") at UTI AMC (hereinafter referred to as "**UTI-PoP**"), registered as a point of presence with PFRDA, on June 25th, 2018. It was also reported that certain officials/ employees of the Noticee were given unauthorized access to the system of UTI-PoP without prior permission of PFRDA as per some arrangement between the Noticee and UTI-PoP.

4. It was *prima facie* observed in the aforesaid exercise that some officials of the Noticee had played a role in the fraudulent activities pertaining to the withdrawal application and were instrumental in siphoning off the funds out of the bank account of the subscriber. It was also observed that the Noticee's officials were allegedly working in UTI-PoP and had indulged in certain point of presence ("**PoP**") activities, without seeking registration from PFRDA to act as a PoP. The aforesaid fraudulent withdrawal allegedly facilitated through the Noticee' employees was also a violation of extant CRA Regulations.

5. In view of the aforesaid finding of facts, the Supervision Department - CRA prepared a preliminary report pertaining to the alleged acts of the Noticee as highlighted above and consequently into the alleged violations of Section 28(1)(a) of the PFRDA Act, regulation 25, 45, 46(6), Code of Conduct of CRA Regulations, and regulation 15(2)(c) of the POP Regulations, 2018 (hereinafter referred to as "**PoP Regulations**"). The preliminary report found that operational lapses and regulatory breaches were committed by the Noticee. Accordingly, the AO was appointed for conducting

adjudication proceedings, adjudging and recommending penalty against Noticee, in case any violation was found.

**INQUIRY PROCEEDINGS BEFORE AO**

6. The AO issued a Show Cause Notice dated May 19, 2020 (hereinafter referred to as "**SCN**") to the Noticee, asking the Noticee to show cause as to why suitable action should not be recommended against it. The following observations/ allegations were made against the Noticee in the SCN:

    a. Officials of the Noticee were given unauthorized access to systems of UTI, without prior permission from Authority. They were involved in day to day operations of NPS for UTI-AMC. User IDs were registered in the name of Noticee's officials who fraudulently processed withdrawal claims on the basis of forged documents such as death certificate and Aadhar card of subscribers. Thus, it was alleged that there has been a violation of Section 28 of the PFRDA Act.

    b. Noticee had breached Regulation 25 and 45 respectively of the CRA Regulations by not ring-fencing CRA activities from Registrar and Transfer Agent ("**RTA**") activities and not making adequate provisions to avoid conflict of interest.

    c. Noticee had violated Regulation 46(6) of CRA Regulations, which required that the Authority has to be informed about any legal proceedings, breach or non-compliance.

    d. It was also alleged that the Noticee had violated the Code of Conduct as contained in Schedule II of CRA Regulations.

7. In view of the above observations, it was alleged that the aforesaid lapses/ actions of the Noticee had allegedly resulted in financial loss and mental harassment to subscribers. It was alleged that the Noticee by concerted, deliberate wanton acts of action and commission, acted in utter disregard of responsibilities as a CRA. Such acts have allegedly resulted in erosion of reputation of NPS and are obstructive towards orderly growth of NPS.

8. The Noticee made submissions vide letter dated September 23, 2020 which are summarised hereunder:

    a) There was a delay in filing the reply to the SCN on account of lockdown due to Covid-19 and the Noticee received the SCN only on September 04, 2021.

b) Only two incidents were not properly executed by rogue officials against whom timely action was taken to reverse the transactions and no loss was caused to subscribers.

c) Activities were carried out in good faith and trust, thus not warranting any action under Section 30 of the PFRDA Act, therefore no case survives, more particularly in the absence of any corroborative evidences.

9. Subsequently, in conformity with the principles of natural justice and provisions of the Inquiry Regulations, an opportunity of personal hearing was provided by the AO to the Noticee on November 05, 2020.

10. The Noticee also filed written submissions dated 11th November 2020 and 10th December 2020. Further, as requested by the Noticee, two more opportunities of personal hearing were provided to the Noticee on December 02, 2020 and December 31, 2020.

11. The AO prepared the Inquiry Report and sent it to the Designated Member as per the procedure specified in the Inquiry Regulations. The Designated Member prepared his own set of recommendations, differing from the AO's view that no penalty should be imposed and forwarded both the Inquiry Report along with his own recommendations to the undersigned ("**Member in charge of Imposing Penalty**/ **Other Member**") for further action. It was observed by the Designated Member that:

a) The Noticee had an arrangement with UTI-PoP, wherein the nature of activities performed under said arrangement were identical to duties and responsibilities of the PoP. The Noticee had failed to ringfence its activities as CRA from that of RTA. The correspondence between the Noticee and UTI-PoP indicated that the relationship between them and the Noticee was that of principal and agent.

b) The digital signature certificate based authorization acting as maker and checker, user IDs registered with CRA had been issued in the name of officials of the Noticee.

c) The merits of the case demand imposition of penalty on the Noticee to meet the ends of justice.

12. Keeping in mind the principles of natural justice, the undersigned provided an opportunity of personal hearing to the Noticee, before taking any further action in the matter. A hearing notice dated 22nd September, 2021 was sent to the Noticee and a hearing was held on 28th October, 2021.

13. The Noticee during the personal hearing and via written submissions made the following arguments:

a) The Notice issued to the Noticee is not valid and the Noticee ought to have been informed about the action contemplated against them and the basis of such action.

b) Under the provisions of the PFRDA Act and Inquiry Regulations, the Designated Member has no power to make his own set of recommendations differing from the findings of the AO.

c) Arguendo, if the Designated Member could make recommendations, they have to be properly reasoned. In the present set of recommendations, there is not an iota of evidence to corroborate the findings given by the Designated Member.

d) None of the parameters enlisted in Section 30(3) of the PFRDA Act with respect to imposition of penalty is applicable in the present matter.

**ISSUES UNDER CONSIDERATION**

14. I have carefully perused the SCN, the Inquiry Report, DM Recommendations, the oral arguments and written submissions made by the Noticee and other facts and material available on record. The following issues arise in this matter for determination:

i. Whether the notice issued to the Noticee dated 22nd September, 2021 for personal hearing giving an opportunity to be heard is a valid notice?

ii. Whether there is sufficient material and evidence on record to establish violation of any provisions of the PFRDA Act or CRA/ PoP Regulations?

iii. If answer to Issue No. ii is in affirmative, what penalty can be imposed upon the Noticee?

**Determination of Issue No. (i)**

15. The Noticee pursuant to the personal hearing held before me, via written submissions submitted that there was no reason given in the hearing notice for holding said hearing. It has submitted that even the basis for any proposed action to be taken against them was not informed. The Noticee has relied on certain judgments which stated that the show cause notice must state both the grounds and the particular action proposed to be taken including the Supreme Court judgment in the case of *Gorkha Securities Services v. Government (NCT of Delhi), (2014) 9 SCC 10*. The Noticee quoted the following para where the Honorable Court held as under:

*"21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.*

*22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz.:*
*i) The material/grounds to be stated on which according to the Department necessitates an action;*
*ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.*

*We may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement".*

16. Further, on a perusal of the said judgment, I find that in aforementioned Gorkha Securities case, the matter pertained to blacklisting of a contractor by a government agency for breaching the terms of the contract, which resulted in depriving the contractor from entering into any public contracts with government, thereby violating the fundamental rights of equality of opportunity in the matter of public contract of such person.

17. In the present case, the documents (Inquiry Report and DM Recommendations) mentioned in the hearing notice along with soft copies of the same, sufficiently explained the need for holding such hearing. Further, the powers of the Other Member as specified in Regulation 11 are broad based and thus before deciding upon any other order confirming, varying or modifying the findings in the Inquiry Report or the AO Recommendations, an opportunity of hearing as mandated in Regulation 11(2) was granted to the Noticee. Thus, I find that the contention of the Noticee in this regard has no substance and is rejected. Issue No. (i) is decided accordingly.

**Determination of Issue No. (ii)**

18. From a perusal of the Inquiry Report dated January 19, 2021, it is noted that the AO had considered at length the following three allegations from the SCN:

    a. Allegation 1 – Officials were carrying out activities of a PoP without Noticee having received registration as a PoP.

    b. Allegation 2 – The Noticee failed to ring fence its CRA activities from those performed as registrar and transfer agent ("**RTA**"), on behalf of PoP.

    c. Allegation 3 – Violation of Code of Conduct as per Schedule II of CRA Regulations.

    Further, after considering the above three allegations, the AO did not recommend imposition of any penalty on the *Noticee* for the following reasons:

    "*18(iv). Having said that, I cannot imagine the fact that though noticee has been using its name interchangeably (to its benefit when it suits) for both, CRA as well as RTA activities; from the records, I am not able to find any material to counter the argument of the noticee made in para 18(2) that the operation of the noticee as a CRA is managed by a dedicated team, which is different from the team that handles RTA activities and that CRA vertical was not involved in carrying out activities pertaining to that of PoP and/ or in the capacity of PoP-SE in any manner. Further, there is nothing on records to counter the claim of the noticee that its officials named above/ responsible for the misconduct, were not the employees of its CRA vertical. Rather, the noticee has produced proof that at the relevant time, they were not employed in its CRA vertical.*

    *(v). Though as a responsible and important intermediary, it was expected that with same top management of both the verticals, and especially in view of the correspondence (including email dated 11th April, 2009 which indicates that they were in knowhow of the arrangement) they were expected to ensure that even RTA vertical should not have been allowed to perform the core functions of UTI-PoP. However, in the given facts, it is difficult to hold the notice as CRA (PFRDA or its AO has no jurisdiction on notice, as RTA) responsible for all the alleged misconducts, especially in view if the fact that whatever records were produced during these proceedings, indicate that the concerned manpower belonged to Karvy-RTA and not to Karvy-CRA.*

    *(vi). Thus, in the facts and records as captured above, I have no option but to give the noticee the benefit of doubt and hold the charge/ allegation under consideration as not proved.*

    *(vii). As regards Allegation II, though, it prima facie appears that the noticee failed to ring-fence its activities as CRA from that of RTA, on the basis of the facts and available records, as referred to above, and especially in the absence of any specific provision*

*suggesting "ring fencing", I cannot hold it responsible in this regard. As recorded above, the records suggest that none of the individuals involved in the misconduct at UTI-PoP, was an employee of noticee as CRA at the relevant time.*

*(viii). As regards Allegation III, when in the facts and circumstances including records, the Noticee has already been given "benefit of doubt" of the violation of regulations and provisions of Act, it cannot be held guilty of violation of Code of Conduct as per Schedule-II of the regulations."*

19. On the basis of the aforesaid observations made in the Inquiry Report, I note that the AO has not found established any violation of the provisions of the Act or Regulations against the Noticee and has submitted his report without recommending any measures/ actions (including penalty) as specified in regulation 10 of the Inquiry Regulations. The AO in his report has observed as under:

*"Recommendations:*
*19. Having recorded my findings on the allegations/ charges, as above, wherein in view of the facts and available records, I could not find enough material evidence to hold the noticee guilty of the alleged violations and thus given it the benefit of doubt, no penalty may be imposed upon it. I recommend accordingly."*

20. Thus, it is evident that the AO although expected some better standards of functioning from the Noticee, he could not find any material or evidence to come to the conclusion that any of the alleged violation stood established.

21. However, the Designated Member in his recommendation as noted in para 11 above has differed with the findings of the AO and instead recommended that as the alleged violation of the PFRDA Act and Regulations stand established, a penalty should be imposed upon the Noticee. He has made these recommendations mainly on the basis of para 18(4) of the Inquiry Report of the AO. On perusal of the paras, referred to by the Designated Member, it is difficult to hold that the findings recorded therein by the AO are sufficient to establish any violation of the provisions of the Act or Regulations. The AO on the basis of those very findings recorded in para 18(4) has drawn the conclusion that there is no material or evidence to establish any violation by the Noticee. The Noticee has produced evidence to show that the operation of the Noticee as CRA is managed by a team and is entirely different from the team that handles RTA activities and that the CRA vertical was not involved in carrying out activities pertaining to that of PoP in any manner, but there is no evidence to the contrary which could prove otherwise. Thus, it can be safely inferred that both the functioning and conduct of the Noticee leaves a lot to be desired, there is no clinching material/ evidences which could prove the contravention.

22. Further, second proviso to Regulation 11(3) of the Inquiry Regulations lays down the scope of the power of review conferred upon the Member authorized to impose penalty.

Therefore, in the absence of any evidence to the contrary, I find no reasons to differ with the findings of the AO. Thus, issue No. (ii) is determined accordingly.

**Determination of Issue No. (iii)**

23. In light of the observation and discussion recorded while determining Issue No. (ii), since no violation could be established against the Noticee, there is no question of imposing penalty on them. I am of the view that the proceedings need to be closed in the present matter without warranting any further action.

**ORDER**

24. In view of the foregoing discussions and analysis, the inquiry proceedings against the Noticee are disposed off, without requiring any further action as no contravention by the Noticee has been found established.

25. In terms of provisions of Regulation 12 of the Inquiry Regulations, a copy of this order shall be served upon the Noticee, and also to PFRDA.

**Sd/-**

**DATE: MAY 02, 2022** **P. K. SINGH**

**PLACE: NEW DELHI** **Whole Time Member (Law) and Member in charge of Imposing Penalty**