

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

Under Section 12(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of: -

Noticee	Name of the Noticee	PAN/Registration details
Noticee no. 1	LFS Broking Private Limited	PAN: AACCL1007D Portfolio Manager (SEBI Registration No. INP0000006721); Stock Broker (SEBI Registration No. INZ000101238); Depository Participant (SEBI Registration No. IN-DP-363-2018); Research Analyst (SEBI Registration No. INH000008127)
Noticee no. 2	Saiyad Jiyajur Rahaman	PAN: BCNPR5031A

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### **A. Background:**

1. The present proceedings are emanating from the Enquiry Report dated September 20, 2023, (hereinafter referred to as the "**Enquiry Report**"), submitted in terms of regulation 26 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as "**the Intermediaries Regulations**").
2. *Noticee no. 1* is registered with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") in various capacities viz., Stock Broker, Portfolio Manager, Depository Participant and Research Analyst. Mr. Saiyad Jiyajur Rahaman, *Noticee no. 2* herein, was the Managing Director/CEO of the *Noticee no. 1*. Further, majority stake of *Noticee no. 1* was directly and indirectly were owned and controlled by *Noticee no. 2*, in the following manner:

**Table no. 1**

#### **Shareholding pattern of the *Noticee no. 1* (as on December 29, 2022)**

<b>Sr. No.</b>	<b>Shareholder's Name</b>	<b>No. of Shares</b>	<b>Total %</b>
1	Saiyad Jiyajur Rahaman ( <i>Noticee no. 2</i> )	8,00,000	30.77
2	Moldarin Investment Consultant Pvt. Ltd. / Moldarin Investmart Private Limited 'MICPL'	15,00,000	57.69
3	Dilip Kumar Maity	3,00,000	11.54

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**Table no. 2**

**Shareholding pattern of Moldarin Investmart Private Limited [as per FORM no. MGT-7 of MICPL filed with MCA (as on December 29, 2022); as provided by NSE]**

<b>Sr. No.</b>	<b>Shareholder's Name</b>	<b>No. of Shares</b>	<b>Total %</b>
1	Saiyad Jiyajur Rahaman ( <i>Noticee no.2</i> )	280000	93.3
2	Dilip Kumar Maity	10000	3.3

3. In the Enquiry Report, the Designated Authority (hereinafter referred to as "**DA**"), after considering the materials on record recommended for cancellation of Certificates of registration granted to LFS Broking Private Limited (*Noticee no. 1*) in various capacities as stated above. Further, the DA has also recommended that Mr. Saiyad Jiyajur Rahaman (*Noticee no. 2*) be debarred from being employed or associated with any registered intermediary or person associated with the securities market for a period of 5 years.

**B. Relevant facts:**

4. The relevant facts of the present matter, as noted from the Enquiry Report, are briefly stated herein below:
- I. Certain complaints were received by SEBI that an entity in the name of LFS Broking and PMS Services (hereinafter referred to as "**LFS-PMS**"), a proprietorship firm of *Noticee no. 2*, was running an investment scheme, assuring monthly return of 2% with a minimum investment amount of INR 25,000, and the said scheme was being run as a legitimate act under the disguise of registration granted by SEBI to the *Noticee no. 1*. i.e., LFS Broking Pvt. Ltd. The said complaints also alleged that the agents of LFS-PMS are

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collecting money from the investors on false information and promises of exorbitant returns of 24% per annum or 2% per month.

II. The *Noticee no. 2*, through Facebook page of “LFS Broking & PMS Services”, was seen to be allegedly offering Portfolio Managing Services (PMS), and was promising fixed returns on investments/profit sharing. The said page was also displaying the Registration Certificate granted by SEBI to the *Noticee no. 1* (LFS Broking Private Limited) in the capacity of a Stock Broker and Portfolio Manager. However, the entity namely LFS Broking and PMS Services (LFS-PMS) has not been registered with SEBI in any capacity.

III. The said Facebook posts are reproduced hereunder:

**Image no. 1**

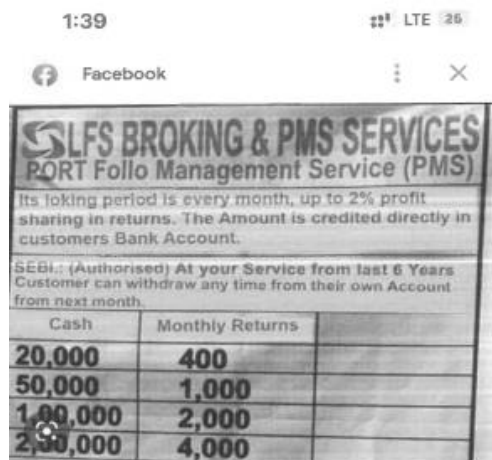
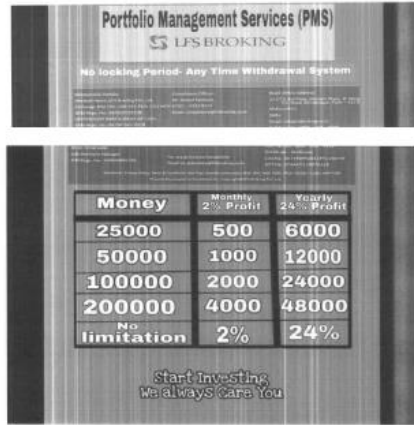


Image no. 2



IV. The contents of the FB post are stated hereunder:

***“LFS Broking & PMS Services***

***Portfolio management Services (PMS)***

*It's loking period is every month, up to 2% profit sharing in the returns. The Amount is credited directly in customers Bank Account.*

*SEBI.: (Authorised) At your service from last 6 years Customer can withdraw any time from their own Account from next month”. (sic)*

Cash	Monthly Returns
20,000	400
50,000	1,000
1,00,000	2,000
2,00,000	4,000

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V. The complete contents of the Post quoted under Image no. 2 are not legible. However, it can be noted from the said Post also, that 2% monthly/ 24% yearly profit was being offered to the investors on minimum investment of INR 25,000.

VI. Apart from the above, another post offered service in the name of MOL Commodities in the following manner

*“Intime Multi Commodities Company Limited in membership MOL Commodities Your new horizon of Investment. All type of Broking - Equity Commodities SPOT Currency Mutual Fund Investment Advisory SIP PMS IPO-ETC.”*

VII. The entity mentioned in the above post, MOL Commodities also, was noticed to have no registration with SEBI and infact, was found to be a partnership firm of Mr. Saiyad Jiyajur Rahaman, *Noticee no. 2* herein. Further, bank accounts of both the firms namely, LFS- PMS and MOL Commodities were being operated by the *Noticee no. 2* only.

VIII. As the *Noticee no. 1* was a member of National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”), the activities of the *Noticee no. 1* were also examined by NSE. In terms of a report of NSE, LFS-PMS appeared to be issuing advertisement for the general public and also collecting funds in cash as well as through cheques in its favour. To illustrate, it accepted a cheque dated April 15, 2021, of INR 10 Lakh from one Mr. SXXXXXt DXs, which got deposited in its account held with IDBI (A/c no. XXXXX0200XXX8907).

IX. The accounts of LFS-PMS held with Punjab National Bank, HDFC Bank and ICICI Bank, received large amounts of funds, out of which substantial amount was transferred to A/c no. XXXXX0200XXX8907 held by it with IDBI Bank.

X. Further, from the bank account statement of *Noticee no. 2* held with HDFC Bank (XXXXX3487X9850) for the period of April 02, 2021 to June 28, 2022, it was noted that total funds of INR 9.3 Crore were received by him from the

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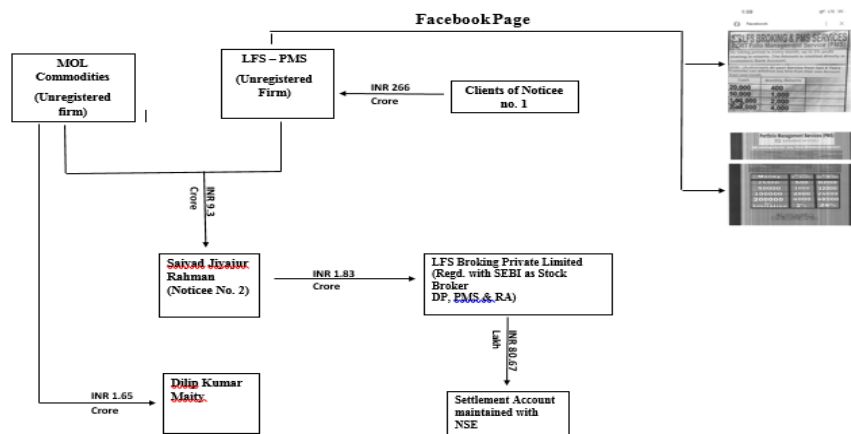
accounts of MOL Commodities and LFS-PMS, and out of the said amount, an amount of INR 1.83 Crore was noticed to have further transferred to the *Noticee no. 1's* Proprietary trading account held with HDFC Bank (A/c No. XXXXX3400X0090). Out of the said amount, an amount of INR 80.67 Lakh was transferred to the settlement account maintained by the *Noticee no. 1* with NSE.

- XI. Further, Mr. Dilip Kumar Maity, one of the directors of *Noticee no. 1*, had received INR 1 Crore from the account of MOL Commodities held with Punjab National Bank (A/c no. XXXX021000X0905), and an amount of INR 65 Lakh from the account of MOL Commodities (A/c no. XXXXX020000X1649, held with IDBI Bank). It shows that some of the amounts that were mobilised by unregistered entities were transferred to the Director of the *Noticee no. 1* (Registered entity).
- XII. LFS Broking and PMS Services and MOL Commodities did not execute any agreement with the investors to provide the Portfolio Management Services or to share the returns on making investments. Funds raised from the investors were transferred to the IDBI Bank account no. XXXXX0200XXX8907 in the name of LFS-PMS, and the money to the investors was also paid from the same account, out of the inflows from the new customers.
- XIII. By such illegal mobilisation, a total amount of INR 266 Crore was collected by LFS-PMS from 6219 clients of the *Noticee no. 1* (registered entity). Out of such 6219 clients, around 4771 clients did not execute any trade in securities market through the *Noticee no. 1*. It was also noticed from the Unique Client Code (UCC) records that the *Noticee no. 1* had 12662 clients in total, however, 8329 clients (approx. 65%) never executed any trade on the Stock Exchange platform even after opening accounts with *Noticee no. 1*.
- XIV. Registration granted as a Stock Broker, Portfolio Manager, Depository Participants, Research Analyst to *Noticee no. 1* was allegedly misused by

Notices nos. 1 and 2 for activities of LFC-PMS and MOL Commodities, for which no registration was granted by SEBI to the said entities.

5. The aforesaid facts are being reflected in a pictorial format in the following image:

**Image no. 3**



**C. Proceedings before DA**

6. Based on the above findings of facts, the DA issued a show cause notice dated December 29, 2022 to *Notices* under regulation 25 of the Intermediaries Regulations, alleging violation of

- I. Sub-section (1) of section 12 of the SEBI Act, 1992 read with regulation 11 and 21 of Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020 (hereinafter referred to as “**PMS Regulations**”) read with clause 1, 3 and 13 of Code of Conduct prescribed in Schedule III to the PMS Regulations, 2020 as they have been allegedly misleading the general public about the registration for mobilising deposits in the name of LFS-PMS and



MOL Commodities claiming to be SEBI registered entities having due authority to carry out PMS activities.

- II. Sub-section (1) of section 12 of SEBI Act, 1992 read with clause (e) of regulation 5 of the Securities and Exchange Board of India (Stock Brokers ) Regulations, 1992 (hereinafter referred to as “**Stock brokers Regulations**”) and regulation 9 read with sub-clauses (1), (3) and (5) of clause A of the Code of Conduct prescribed in Schedule II of the Stock Brokers Regulations as they have been mobilizing illegal deposits in the name of LFS-PMS and MOL Commodities by misleading the general public about the registration status and claiming them to be registered stockbrokers.
- III. Sub-section (1) of section 12 of the SEBI Act, 1992 read with clause (d) of regulation 35 and regulation 37 read with clause 3 of Code of Conduct prescribed in Third Schedule of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 (hereinafter referred to as “**DP Regulations**”), as they have been allegedly misleading the general public about the registration and mobilizing illegal deposits in the name of LFS-PMS and MOL Commodities claiming them to be stockbrokers and a depository participants.
- IV. Sub-section (1) of section 12 of the SEBI Act, 1992 read with sub-regulation (i) of regulation 13 and sub-regulation (2) of regulation 24 read with clause 1 of Code of Conduct prescribed in Third Schedule of the Securities and Exchange Board of India (Research Analysts) Regulations, 2014 (hereinafter referred to as “**RA Regulations**”), as they have misled the general public about the registration and mobilised illegal deposit in the name of LFS-PMS and MOL Commodities, claiming them to be Research Analyst.
- V. Regulation 7 of the Intermediaries Regulations read with the Fit and Proper Criteria prescribed under Schedule II of the Intermediaries Regulations, as *Noticee no. 1* and *Noticee no. 2* are not persons of integrity, honesty, ethical

behaviour, reputation, fairness and character, so as to continue to act as a Portfolio Manager under the PMS Regulations, Research Analyst under the RA Regulations, Stock Broker under the Stock Brokers Regulations, and Depository participant under the DP Regulations.

7. In response to the show cause notice issued by the DA, *Noticees nos. 1 and 2* filed their respective replies vide separate letters, both dated February 14, 2023. Further, a personal hearing was also conducted by the DA on February 16, 2023 and post hearing written submissions dated February 22, 2023 was filed by the *Noticee no. 1*. Simultaneously, applications for settling the alleged violations under the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 were filed by the *Noticees nos. 1 and 2*. However, the said applications were rejected and another opportunity of personal hearing was granted by the DA on August 02, 2023, which was availed by the *Noticee no. 1* and post hearing written submissions dated August 14, 2023 was filed. With respect to the *Noticee no. 2*, the personal hearing was adjourned to August 07, 2023 at his request and during the said hearing before the DA held on August 07, 2023, the Authorised Representative of the *Noticee no. 2* was advised to submit certain documents/details pertaining to specific fund transactions. Vide his email dated August 14, 2023, post hearing submissions were made by the *Noticee no. 2*, however, the details/documents as specifically sought by the DA were not furnished and it was stated that the *Noticee no. 2* is having health issues and he would find out the details so as to furnish the same.
8. Further, based on some new evidences that emerged out of an order dated July 18, 2023 passed by NSE, a Supplementary show cause notice dated August 31, 2023 (hereinafter referred to as "**Supplementary Show Cause Notice**") was issued to the *Noticees* which noted the following acts:
  - I. A video was broadcasted on the Youtube Channel of Aaj Bangla. In the said video, it was seen that many individuals gathered in the event were

enticed/allured to invest funds in LFS-PMS (Proprietorship firm of *Noticee no. 2*) and Moldarin Investments & Leniq Advisors Pvt. Ltd. as they were offering 2% monthly returns.

- II. As per media reports, 30,000 individuals attended the said event. Some of the individuals confirmed to the media personnel that they have invested funds with LFS Broking Private Limited and its associates, and were sharing their experience of receiving monthly returns. Few other investors expressed that they are attending the event to learn more about the investment schemes offering assured returns.
- III. Further, the Executives of *Noticee no. 1* stated that *Noticee no. 1* is running investment schemes offering assured returns across the nation and they have experts to run such scheme.
- IV. *Noticee no. 2* stated in the event that their Research Team is providing stock tips, thereby minimising risk and providing returns better than bank fixed deposits.
- V. Further, an email communication was exchanged between Mr. Soumitra Sinha [Executive Director of LFS Broking Private Limited, *Noticee 1*] and an employee of the *Noticee no. 1*. The said email pertained to Commitment Agreement dated May 15, 2019 between LFS-PMS and a client, promising assured return at the rate of 20% to 36% per annum on an investment of INR 5 Lakh.
- VI. In terms of the statement of Account no. XXXXX0200XXX8907 of LFS- PMS held with IDBI Bank (for the period of July 01, 20221 to July 30, 2022), there were 9270 instances of monthly fixed payments made to 1789 clients of LFS Broking Private Limited. The said transactions cumulatively involved INR 7,36,28,640.

- VII. For two clients, namely, SXXXXa PXXXXd CXXXXXXXXXy and SXXa CXXXXXXXXXy, it was noticed that they received a payment of INR 1,63,000 on an initial investment of INR 81,50,000 in the period of December 2021 to January, 2022. In January, 2022, the aforesaid clients withdrew INR 50 Lakh, consequently, the amount being received was reduced to INR 63,000 on the balance amount of INR 31,50,000 till April, 2022.
- VIII. *Noticee no. 2*, while travelling on April 21, 2023, was arrested by Bihar Police as upon search of the vehicle in which *Noticee no. 2* was travelling with another director of the *Noticee no. 1*, police officials had found foreign currency beyond the permissible limit. On April 25, 2023, the *Noticee no. 2* was presented before the concerned Court, and he was sent to Judicial custody till May 06, 2023, and ultimately, *Noticee no. 2* was enlarged on bail by the Hon'ble Patna High Court. The lodging of the FIR and arrest of the *Noticee no. 2* has tarnished the integrity and reputation of the *Noticee no. 1* through the *Noticee no. 2* in the securities market.
9. In reply to the Supplementary SCN, *Notices* filed their replies vide separate letters dated September 13, 2023. Further, another hearing was scheduled by the DA on September 15, 2023, which got adjourned to September 18, 2023 on request made by the *Notices*. Finally, the DA submitted its Enquiry Report dated September 20, 2023 and made his recommendations as stated in para 3 of the present order.

#### **D. Proceedings before Whole Time Member**

10. Based on the Enquiry Report, a post-Enquiry Show Cause Notice dated October 20, 2023 (hereinafter referred to as "**SCN**") was issued to *Notices* in terms of sub-regulation (1) of regulation 27 of the Intermediaries Regulations, calling upon them to show cause as to why action as recommended by the DA or any other measure in terms of the Intermediaries Regulations, be not taken against them.

11. In response to the SCN, the *Noticee no. 1* vide letter dated November 15, 2023 and the *Noticee no. 2* vide his letter dated November 17, 2023 submitted their respective replies to the SCN.

12. The *Noticee no. 1* has made the following submissions in response to the SCN:

- I. The Enquiry Report of the DA is a mere repetition of the show cause notice, which has already been replied to.
- II. LFS Broking Private Limited (LBPL) is a SEBI registered intermediary, having no business or statutory relation with LFS- PMS (Proprietary concern), an unregistered entity.
- III. The confusion arose because the names were perceptibly similar, viz., LFS Broking and Private Limited (the answering entity) and LFS Broking and PMS Services (the Proprietary concern of Mr. Rahaman), which is a separate and independent entity.
- IV. There is no connection or fund transfer between the aforesaid two entities except for the presence of Mr. Rahaman, who holds majority of the shares of *Noticee no.1* but he is not involved in the day-to-day affairs and does not influence the decision making of *Noticee no.1*.
- V. As on the date of issuance of show cause notice dated December 29, 2022, there is no direct evidence against *Noticee no.1* nor has any direct charge been made.
- VI. One of the Promoter of *Noticee no.1* was observed to be involved in certain acts which may not be in consonance of the norms set by SEBI. An Ex-Director of *Noticee no.1* has been alleged to have done some wrongs, and as and when the said facts came to the knowledge of the *Noticee no.1* by the show cause notice of NSE dated September 23, 2022, it asked the said Director to resign, and he has resigned w.e.f October 14, 2022.
- VII. Further, the *Noticee no.1* has sought permission from NSE to transfer the shares held by him, however, NSE is yet to reply to the said letter.
- VIII. One of the observation states that advertisements were made and other entities (LFS-PMS and MOL Commodities) were using the PMS Registration of the Stock Broker (*Noticee no.1*), but it is not shown that the Stock Broker has allowed the usage of the said registration or the advertisements were issued by the Stock Broker. It may be noted that the PMS Registration number is available publically on the SEBI's website.

- IX. A clarification was given in Print media to the effect the LBPL never indulges in any assured or guaranteed returns nor has it allowed its PMS facility for any of such activities.
- X. Although it seems from the documents that marketing was done in the name of PMS registration of *Noticee no.1* only, however, no money has been invested in the Stock Broker PMS platform. Mere use of Registration number and absence of any direct involvement does not require harsh actions, as proposed.
- XI. Reliance has been placed on the judgment of the Hon'ble Supreme Court of India passed in the matter of *Gorkha Security Services Vs. Government (NCT of Delhi) & Others [(2014) 9 SCC 105]* wherein it was *inter alia* held that the purpose of show cause notice is primarily to enable the *Noticee* to meet the grounds on which action is proposed against him.
- XII. The recommendation of cancelling the registration has ignored the good conduct of *Noticee no.1* during last 7 years as no serious violation has been ever alleged against it. Cancelling of the registration of *Noticee no.1* shall affect the livelihood of 100 families of its employees.
- XIII. SEBI or NSE have not been able to establish through the books of accounts/records that *Noticee no.1* has offered any assured or guaranteed return to any of its clients.
- XIV. It is a fact that many individuals, who were clients of other entities promoted by Mr. Rahaman, later also opened their Trading-Demat account with *Noticee no.1*.
- XV. The action in a matter should be commensurate with the findings and not based on assumptions and presumptions.
- XVI. NSE has not provided the copy of the Forensic Audit Report.
- XVII. On similar set of facts, the action of NSE has been stayed twice by the Hon'ble SAT.
- XVIII. A corporation is an artificial juristic person and distinct entity as held in multiple judgments of various courts including in *MV Javali Vs. Mahan Borewell*. Further, the Hon'ble Supreme Court of India in the matter of *Sunil Bharti Mittal Vs. Central Bureau of Investigation* has explained that the notion of "alter ego" is to be used only in one direction, i.e., if the group of people that govern the firm have criminal intent is to be attributed to the body corporate and not vice versa.
- XIX. The Board of directors can be held accountable only if the criminal activities of the firm has been confined to their active involvement.

13. Further, the submissions of the *Noticee no. 2* made in response to the SCN, are being summarised hereunder:

- I. The Report of the DA has recommended that Mr. Rahaman may be debarred from being employed or associated with any registered intermediary or any person associated with the securities market for a period of 5 years.
- II. The aforesaid recommendation/observations pertained to LFS Broking Private Limited, where he was a Promoter-Director. However, he has resigned from the Directorship w.e.f October 14, 2022 and has also sought permission from NSE to transfer his shareholding, and the said request is yet to be answered by NSE.
- III. It is denied that being the Promoter-Director and having dominant control, he has mis-utilised his position or interfered in the day-to-day affairs of *Noticee no.1*, which was claimed to be professionally managed.
- IV. There did not exist any transactional relationship between *Noticee no.1* and other entities controlled by him.
- V. Being an entrepreneur, few entities have been floated by him but it is refuted that *Noticee no.1* has been used as a vehicle to violate securities laws. He had asked his clients from other businesses to trade through *Noticee no.1*, but there was never any ill intention to cheat anyone.
- VI. The other concerns namely LFS Broking and PMS Services (Proprietorship concern of *Noticee no. 2*) and MOL Commodities (Partnership firm of *Noticee no. 2*) have never invested in the stock market, and there has always been a firewall among them.
- VII. The *Noticee* is carrying on the business of construction material for a very long time. Even before entering into the business of stock broking, he had more than 20,000 people who had invested in Primary Material Supply business. LFS-PMS is solely engaged in business of Primary Material supply of agro products and it has nothing to do with the securities market. The name LFS-PMS was being used since 2015, i.e., even before the *Noticee* ventured into stock broking business by investing in LFS Broking Private Limited (*Noticee no.1*). Broking and PMS implies broking and Primary Material Supply.
- VIII. As the *Noticee no. 2* became a dominant shareholder in LFS Broking Private Limited (*Noticee no.1*), several investors of the Primary Material Supply business also ended up opening up their demat/trading accounts with the Stock broking company.
- IX. The *Noticee no.2* is well aware that the securities market regulations prohibit any fixed return schemes.

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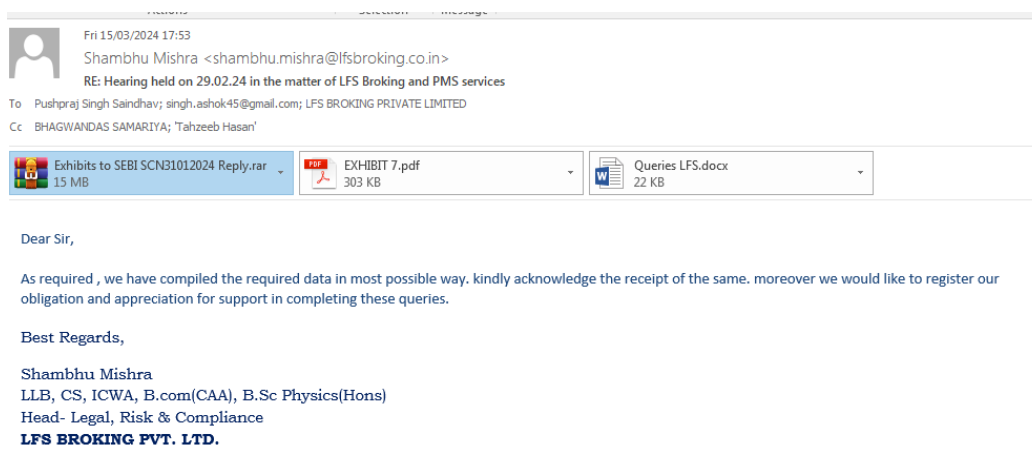
- X. However, due to similar names of LFS-PMS and the registered broking entity, the registered entity started receiving queries and it (LFS Broking Private Limited) issued public notices stating that it is not engaged in the business of providing any fixed returns, despite the *Noticee no. 2* being the Promoter Director of the Company.
- XI. The other businesses of the *Noticee no. 2* are being run on the loans provided by various individuals, and such loans are being repaid in a timely manner.
- XII. The *Noticee no. 2* has never promised Portfolio Management Services to any of clients of his Proprietorship and Partnership firm, however, he has asked such clients to open trading cum demat account with LFS Broking Private Limited (*Noticee no. 1*).
- XIII. The movement of funds would itself show that such funds were coming from public as loan and were being returned after making some earning in the business. Such loans in Proprietorship firm can be taken for working capital etc. However, such loans were never invested in the stock market.
- XIV. No loss has been caused to any of the investor.

14. After receipt of the replies, a personal hearing in the matter was scheduled for December 20, 2023. However, a request for adjournment was received from the *Noticees* citing ill health of their Counsel. Subsequently, the personal hearing was scheduled to January 24, 2024, which came to be adjourned to February 29, 2024 due to certain administrative exigencies. On February 29, 2024, *Noticee nos. 1* and *2* forwarded their separate authority letters authorising Mr. Shambhu Mishra and Mr. Ashok Singh, Advocate, authorising them to commonly represent the *Noticees* during the hearing. Mr. Ashok Singh, Advocate appeared before me through Webex and made oral submissions on behalf of *Noticees*. During the hearing, certain queries were raised to the Counsel. As no reply was coming forward, vide email dated March 05, 2024, a reminder was issued to the *Noticees*. In response, Mr. Shambhu Mishra vide email dated March 11, 2024, sought time till March 15, 2024, citing ill health of the authorised person. Finally, vide email dated March 15, 2024, Mr. Shambhu Mishra sent the response to the queries along with the



supporting documents. The said email dated March 15, 2024 is reproduced hereunder:

#### Image no. 4



15. Further, queries and the corresponding common responses of both the *Noticees* furnished vide aforesaid email dated March 15, 2024 are reproduced here under:

I. Please explain how SEBI registration of *Noticee no. 1* was displayed in the Facebook post of Proprietor concern of *Noticee no. 2* as well as during video of Aaj Bangla on Youtube.

**Response:** - Since *Noticee no. 2* was also the shareholder and a Director of the *Noticee no. 1* so it may be reason that the companies where *Noticee no 2* was also a shareholder were also displayed at social media.

II. Please explain, if any legal action has been taken by *Noticee no. 1* against *Noticee no. 2* for misuse of its registration certificate. If not, please explain the reasons.

**Response:** - First Show cause notice was served upon *Noticee no. 1* on 23<sup>rd</sup> September, 2022 at that time *Noticee no. 1* immediately served Show cause notice upon *Noticee no.2* and he was asked to relinquish his Board position, moreover *Noticee no. 1* was also keen to get shares of *Noticee no. 2* transferred but due to continued actions and series of suspension and other unfortunate event same couldn't be achieved.

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III. Please submit copies of documents filed with RoC on receipt of INR 1 Crore as equity from *Noticee no. 2*. Also explain how capital structure changed due to the infusion of INR 1 Crore of equity from *Noticee no. 2*.

**Response:-** *The fund came in September, 2022, and same was capitalized and Notice no. 2 remained biggest shareholder of the Noticee no. 1. we are enclosing the required copies of ROC documents for capitalization of INR 1 crore as Exhibit-1.*

IV. Please submit copies of documents filed with RoC regarding change of Directors of *Noticee no. 1*.

**Response:-** *Notice no. 2 who has resigned w.e.f 14.10.2022 the relevant copies related to ROC filing are enclosed as Exhibit-2.*

V. Please provide the reason of payment of INR 1 Crore and 65 Lakh by firms of *Noticee no. 2* to Mr. Dilip Kumar Maity, Director of *Noticee no. 1*.

**Response:-** *Since Mr. Dilip Kumar Maity has his own nursery farm, through which he services decorative plants, trees, daily supply of flowers and decorative services at Noticee no. 2's four hotels and resorts spread across west Bengal. Further some part was a business loan also.*

VI. Please provide copy of IT Returns, GST Returns, invoices, e-way bills, of two firms of *Noticee no. 2* to support the claim of business being carried out by the said two firms of *Noticee no. 2*.

**Response:-** *Upon enquiry Noticee no. 2 has shared his own IT returns, which we are enclosing as Exhibit-3.*

VII. Please explain why public notice issued by *Noticee no. 1* did not point out specific misuse of its registration by *Noticee no. 2*.

**Response:-** *The public notice was intended for every entity who was mis using Noticee no. 1 for giving assured and guaranteed return.*

VIII. Please provide detail narration of all bank accounts of *Noticee no. 2* which was requested by the Enquiry officer but not produced before him.

**Response:-** *Noticee no. 2 has already closed the bank accounts in the month of December, 2022 so it is not possible for him to procure them, right now, he has tried but bank is refusing as stated by him. However, we have procured his personal bank account and same is enclosed as **Exhibit-4**.*

IX. Provide details of action taken by *Noticee no. 1* against its Executives for participation in the private event of *Noticee no. 2* as can be seen from the youtube video of Aaj Bangla.

**Response:-** *Time and again the Noticee no. 1 has always maintained that there was a firewall among the entities promoted by Noticee no. 2, Your kind attention is drawn toward the fact that the Executives of Noticee no. 1 were there just to represent the benefits of stock market investing. Further Noticee no. 2 has rural clients they were explained by the executives of Notice No. 1 for stock market investment.*

X. Please explain how fixed return was provided by *Noticee no. 2* to Subhra Prasad Chakraborty and Sova Chakraborty as seen from the bank account of the firm of *Noticee no. 2* where fixed return of INR 1,63,000/- on an initial investment of INR 81,50,000/- was given between December 2021 and January, 2022. After beneficiaries withdraw INR 50,000,00, fixed return of INR 63,000 was given on the remaining amount every month till April, 2022.

**Response:-** *We are not defending the activities of Noticee no. 2, because he may have his own methods of business but the Noticee no.1 was never part of those arrangement. Moreover, client's of Noticee no. 2 never invested in stock market which were given specifically to his other businesses in other name other than broking company.*

XI. Please explain why *Notice no. 2* referred to SEBI website in the Youtube video of Aaj Bangla.

**Response:-** *Noticee no. 2 was referring to see the credentials of Noticee no. 1, Further during the Investor awareness seminar , Noticee no. 2 was introducing his existing clients about benefits of stock market investment and since he was also shareholder and director of the stock broking company so he was introducing the Research analyst of the company, who were also the executives of Noticee no.1.*

*Further we are also enclosing the clip of the CNBC bite's link as <https://www.youtube.com/watch?v=aYAeil-JnNA> where the same programme was also captured and in no place there was any mention of the assured or guaranteed returns.*

XII. When the Noticee no. 2 took over the shareholding/management of Noticee no. 1 and from whom?

**Response:-** *Noticee no.2 has taken over the shareholding of Noticee no. 1 from CKP holdings and Vishal Trehan through his controlled Moldrin investment consultants private limited and himself in October 2017. Copy of the Board resolution is enclosed as evidence of the same as **Exhibit-5**.*

XIII. When the Proprietorship firm LFS Broking & PMS and MOL Commodities were formed?

**Response:-** *These were formed in years 2017 and 2012 respectively.*

XIV. When the Noticee no. 1 was renamed as LFS Broking Private Limited?

**Response:-** *Name remained same, because its certificate of incorporate shows in name since 2011 copy enclosed for evidence as **Exhibit-6**.*

XV. Please furnish any other document that you wish to submit in support of your defense.

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**Order in respect of LFS Broking Private Limited and another**

**Responses-** *Recently, We have replied to SEBI in detail about termination of membership of Notice no. 2 and same is adequately addressed our serious concern about the action of the regulatory bodies and same is enclosed along with all the exhibits as **Exhibit-7***

16. I now proceed to examine the matter on its merits, however, before proceeding further, it is necessary to go through the relevant provisions of law and the same are reproduced here under for reference:

**SEBI Act, 1992**

***Registration of stock brokers, sub-brokers, share transfer agents, etc.***

**12.** *(1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:*

*Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:*

*Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.*

...

**(3)** *The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:*

*Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.*

*Delegation.*

19. *The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.*

### **SEBI (Intermediaries) Regulations, 2008**

#### **Consideration of application.**

7.(1) *For considering the eligibility of the applicant and grant of certificate to such applicant, the Board shall take into account all matters which it deems relevant to the activities in the securities market, including but not limited to the following –*

- (a) whether the applicant or any of its associates have in the past been refused certificate by the Board and if so, the ground for such refusal;*
- (b) whether the applicant, its directors or partners, or trustees, as the case may be or its principal officer is involved in any pending litigation connected with the securities market which has an adverse bearing on the business of the applicant or on development or functioning of the securities markets;*
- (c) whether the applicant satisfies the eligibility criteria and other requirements as specified in these regulations and the relevant regulations;*
- (d) whether the grant of a certificate to the applicant is in the interest of the investors and the development of the securities market.*

*(2) Any application for grant of certificate:-*

- (a) which is not complete in all respects and does not conform to the requirements in Form A and the requirements specified in the relevant regulation;*
- (b) which does not contain such additional information as required by the Board;*
- (c) which is incorrect, false or misleading in nature;*
- (d) where the applicant is not in compliance with the eligibility requirements as set out under these regulations or the relevant regulations;*
- (e) where the applicant is not a 'fit and proper person' as stated in Schedule II;*
- (f) where the principal officer does not have the requisite qualification or experience as required under the relevant regulations; shall be rejected by the Board for reasons to be recorded by the Board in writing.*

(3) Before rejecting an application, the applicant shall be given an opportunity in writing to make good the deficiencies within the time specified by the Board, for the purpose:

Provided that where an application is rejected for the reason that it contains false or misleading information, no such opportunity may be given and the applicant shall not make any application for grant of certificate under these regulations or any other regulations for a period of one year from the date of such rejection.

## **SCHEDULE II**

(1) The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:

(a) the competence and capability in terms of infrastructure and manpower requirements; and

(b) the financial soundness, which includes meeting the net worth requirements.

(2) The 'fit and proper person' criteria shall apply to the following persons:

(a) the applicant or the intermediary;

(b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and

(c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:

Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria.

**Explanation** – For the purpose of this sub-clause, the expressions "controlling interest" and "control" in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.

(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:

(a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;

(b) the person not incurring any of the following disqualifications:

(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;

(ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;

(iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement

agency in any matter concerning securities laws or financial markets and such order is in force;

(iv) recovery proceedings have been initiated by the Board against such person and are pending;

(v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;

(vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;

(vii) such person has been declared insolvent and not discharged;

(viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

(ix) such person has been categorized as a wilful defaulter;

(x) such person has been declared a fugitive economic offender; or

(xi) any other disqualification as may be specified by the Board from time to time.

(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.

(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.

(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter: Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary: Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.

(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the



*intermediary shall ensure that the persons as referred in sub-clauses (b) and(c) of clause (2)comply with the 'fit and proper person' criteria.*

*Recommendation of action*

*26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures,–*

- (i) disposing of the proceedings without any adverse action;*
- (ii) cancellation of the certificate of registration;*
- (iii) suspension of the certificate of registration for a specified period;*
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;*
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;*
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;*
- (vii) issuance of a regulatory censure to the noticee:*

*Order*

*27.(1) On receipt of the report containing the measures recommended by the designated authority, the competent authority shall cause to forward a copy of the report submitted by the designated authority and call upon the noticee to make its submission, in writing, as to why the measures recommended by the designated authority or any other action as contemplated in these regulations, should not be taken.*

*(2) The noticee shall submit, within a period as specified in the notice, but not exceeding twenty-one days from the date of service thereof, a written submission, along with documentary evidence, if any, in support of the written submission:*

*Provided that upon the request of the noticee, the competent authority, after recording reasons, in writing may cause to extend the time specified for submitting reply to the notice.*

*(3) After considering the submission of the noticee, the competent authority may if deemed fit, for reasons to be recorded by it in writing, remit the matter to the designated authority to enquire afresh or to further enquire and resubmit the report.*

*(4) The competent authority may grant an opportunity of personal hearing where the designated authority has recommended cancelation of certificate of registration or the competent authority is of the prima facie view that it is a fit case for cancellation of certificate of registration.*

*Explanation: It shall not be necessary for the competent authority to give the noticee any opportunity of personal hearing if neither the designated authority has recommended cancelation of certificate of*

registration nor the 1competent authority is of the prima facie view that it is a fit case for cancellation of certificate of registration.

(5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavor to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later.

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....

(2) On and from the date of surrender or cancellation of the certificate, the concerned person shall-

(a) return the certificate of registration so cancelled to the Board and shall not represent itself to be a holder of certificate for carrying out the activity for which such certificate had been granted;

(b) cease to carry on any activity in respect of which the certificate had been granted;

(c) transfer its activities to another person holding a valid certificate of registration to carry on such activity and allow its clients or investors to withdraw or transfer their securities or funds held in its custody or to withdraw any assignment given to it, without any additional cost to such client or investor;

(d) make provisions as regards liability incurred or assumed by it;

(e) take such other action including the action relating to any records or documents and securities or money of the investors that may be in custody or control of such person, within the time period and in the manner, as may be required under the relevant regulations or as may be directed by the Board while passing order under this Chapter or otherwise.

### **SEBI (Portfolio Managers) Regulations, 2020**

#### **Conditions of registration.**

11. The certificate of registration granted under regulation 10 shall, inter alia, be subject to the following conditions, namely: -

(a) the portfolio manager shall abide by the provisions of the Act and these regulations;

(aa) the portfolio manager shall obtain prior approval of the Board in case of change in control in such manner as may be specified by the Board

(b) the portfolio manager shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

(c) the portfolio manager shall pay the fees for registration in the manner provided in these regulations;

*(d) the portfolio manager shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received; and*

*(e) the portfolio manager shall maintain the networth specified in regulation 9 at all times during the period of the certificate:*

*Provided that the requirement under clause(e) shall not apply to Co-investment Portfolio Manager.*

#### **Chapter IV - GENERAL OBLIGATIONS AND RESPONSIBILITIES**

##### **Code of Conduct.**

*21. Every portfolio manager shall abide by the Code of Conduct as specified in Schedule III.*

##### **SCHEDULE III - CODE OF CONDUCT-PORTFOLIO MANAGER**

*1.A portfolio manager shall, in the conduct of his business, observe high standards of integrity and fairness in all his dealings with his clients and other portfolio managers.*

*3.A portfolio manager shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment. The portfolio manager shall either avoid any conflict of interest in his investment or disinvestment decision, or where any conflict of interest arises, ensure fair treatment to all his customers. It shall disclose to the clients, possible source of conflict of interest, while providing unbiased services. A portfolio manager shall not place his interest above those of his clients.*

*13.(a) The portfolio manager shall abide by the Act, Rules, and regulations made thereunder and the Guidelines / Schemes issued by the Board.*

##### **SEBI (Stock Brokers) Regulations, 1992**

##### **Consideration of application for grant of registration.**

*5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,-*

*(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;*

*Conditions of registration.*

*9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-*

*(a) the stock broker holds the membership of any stock exchange;*

*(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;*

- (c) where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;
- (d) he shall pay fees charged by the Board in the manner provided in these regulations;
- (e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;
- (f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and
- (g) he shall at all times maintain the minimum networth as specified in Schedule VI.
- (h) Every stock broker who act as an underwriter shall enter into a valid agreement with the body corporate on whose behalf it is acting as underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.
- (i) Every Stock Broker shall be entitled to act as an underwriter only out of its own net worth/funds as may be prescribed from time to time.

## **SCHEDULE II - CODE OF CONDUCT FOR STOCK BROKERS**

### **A. General.**

- (1) *Integrity:* A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.
- (3) *Manipulation:* A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.
- (5) *Compliance with statutory requirements:* A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

### **SEBI (Depositories and Participants) Regulations, 2018**

#### **Consideration of application for grant of certificate of registration**

35. For the purpose of grant of certificate of registration, the Board shall take into account all matters which are relevant to or relating to the efficient and orderly functioning of a participant and in particular, whether the applicant complies with the following requirements, namely :—

- (d) the applicant is a fit and proper person

#### **Participants to abide by code of conduct**

37. The participant holding a certificate of registration shall, at all times, abide by the Code of Conduct as specified in Part A of Third Schedule.

## **THIRD SCHEDULE**

### **Part-A - CODE OF CONDUCT FOR PARTICIPANTS**

3. A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.

**SEBI (Research Analysts) Regulations, 2014**

**Conditions of certificate.**

13. The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-

(i) the research analyst shall abide by the provisions of the Act and these regulations;

**General responsibility.**

24. (2) Research analyst or research entity shall abide by Code of Conduct as specified in Third Schedule.

**THIRD SCHEDULE - CODE OF CONDUCT FOR RESEARCH ANALYST**

**1. Honesty and Good Faith**

Research analyst or research entity shall act honestly and in good faith.

**E. Examination of evidence**

17. I have carefully perused the material on record including the Enquiry Report submitted by the DA, responses of the Noticees, applicable provisions of law and other material available on record. In my view, the following issues need to be decided in the present proceedings:

- I. Whether there are evidences to show that Noticee no. 2 was carrying the business of construction material supply?
- II. Whether there are evidences that the amounts received in the bank accounts of the firms of Noticee no. 2 are loan taken for business of construction material supply?
- III. Whether there are evidences that the activities of Noticee no. 2 offering assured returns are in respect of dealing in securities?
- IV. Whether there are evidences that activities carried out by Noticee no. 2 are well within the knowledge and/or consent of the Noticee no. 1?

18. I shall deal with the aforesaid issues one by one.

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**Order in respect of LFS Broking Private Limited and another**

***I. Whether there is evidence to show that Noticee no. 2 was carrying the business of construction material supply?***

19. As seen from the post hearing submissions, *Noticee no. 1* was acquired by *Noticee no.2* in October, 2017, by acquiring controlling shareholding from its erstwhile promoters. Further, in the same year, the *Noticee no. 2* formed a Proprietorship firm named as LFS Broking & PMS Services (LFS-PMS). Though, *Noticee no. 2* has submitted that its proprietorship concern i.e. LFS-PMS was in existence before he acquired the *Noticee no. 1*, however, the records submitted in respect of the said submission clearly shows that the proprietorship concern was formed at the same time as the acquisition of the *Noticee no. 1*. As per response no. XII (quoted at page no. 20), *Noticee no. 2* took over shareholding of *Noticee no. 1* in October, 2017 and as per response no. XIII, LFS-PMS was also formed in 2017. *Noticee no. 2* has further claimed that before entering into the stock-broking business by acquiring *Noticee no. 1*, he was in the business of / Primary Material Supply pertaining to construction and more than 20,000 people had invested with him in the said construction related business. It has also been contended that LFS-PMS is solely engaged in the business of Primary Material Supply and supply of agro products and it has no relation with the activities of securities market.
20. As noted above, it is pertinent to record that in the reply dated November 17, 2023, the *Noticee no. 2* has submitted that he was using the name LFS Broking and PMS since the year 2015. However, in response to the specific query raised during the personal hearing, it has been submitted that the said Proprietorship firm was formed in the year 2017. Apart from the said contradiction, it is also noticed that during the hearing, the *Noticee no. 2* was specifically advised to submit copies of IT Returns, GST Returns, invoices, e-way bill etc., in support of his claim that his proprietorship concern was into business of construction material. However, in response, only the copies of IT Returns of *Noticee no. 2* have been filed, which in no manner show that the proprietorship concern of *Noticee no. 2* was/is carrying out the business of construction/Primary Material Supply activities. The IT Returns

of the *Noticee no. 2* only shows reimbursement income and reimbursement expenditure, with no further details. If *Noticee no. 2* was indeed carrying on the business of construction/Primary Material Supply having large turnover (INR 266 Crore) under his Proprietorship concern of LFS-PMS, nothing prevented him in submitting GST registration number, invoices, e-way bills, GST returns etc. in the present proceedings. As observed above that a specific query was raised during hearing asking the *Noticee no. 2* to provide independent verifiable evidence in support of his claim of being into business related to material supply, however, no such evidence has been submitted so far. In such a scenario a reasonable inference can be drawn that no such activities were being carried on by *Noticee no. 2*.

21. In view of the aforesaid facts, it is observed that despite getting multiple opportunities, *Noticee no. 2* has failed to establish his defence that his Proprietorship firm LFS-PMS was working in the business of construction material supply/Primary Market Supply. Under the circumstances, it can be safely concluded that the claim of the *Noticee no. 2* that the firm LFS-PMS, having name similar to the *Noticee no. 1*, was having the business of construction material/Primary Material Supply stands disproved.

***II. Whether there are evidences that the amounts received in the bank accounts of the firms of Noticee no. 2 are loan taken for business of construction material supply?***

22. Insofar as the submissions that the money paid by individuals to LFS-PMS (proprietorship concern of *Noticee no. 2*) was loan and same was being repaid to such individuals is concerned, I note that the Enquiry Report records that LFS-PMS has received funds amounting to INR 266 Crore, from 6219 individuals. I further note that during the proceedings before the DA, no claim of such transactions being

in the nature of loan was made by the *Noticee no. 2*. The Enquiry Report *inter alia* records as:

*“54. In this regard, Noticee 1 has denied the allegations, and submitted that it has not received any funds from these 6219 clients. Noticee 2 has only submitted that these were the clients of his proprietorship firms, who became clients of Noticee 1, and that no illegal mobilization of funds has occurred. However, Noticee 1 and 2 have failed to explain the reasons for funds transferred to these 6219 entities by the proprietorship firm of Noticee 2, and the subsequent on-boarding of these entities as clients of Noticee 1. No bills, tax invoices, or any other document, which can prove the objective of fund transfers have been submitted by the Noticees and no specific explanation has been provided by them. Noticees have only submitted that the proprietorship firms are not involved in securities market, and hence not under SEBI’s purview.”* (underline supplied)

23. As stated earlier, INR 266 Crore was received by LFS-PMS from the individuals who were also the clients of the *Noticee no. 1*. Further, it has also been bought on record that monthly payments to 1789 such individuals were made by LFS-PMS during July 01, 2021 to July 30, 2022 and the said payments involved a total amount of INR 7.36 Crore (approx.). It is noted that in his reply to the allegation in the SCN, *Noticee no. 2* has claimed that the movement of funds itself shows that the funds were coming from public as loan and were returned after some earning in business.

24. I find that *Noticee no. 2* has failed in substantiating the claim of having received money as a loan as in support of the said claim no evidence in the form of loan agreement, IT Returns, TDS, etc., have been furnished. The IT Returns also does not show loan outstanding in the returns. It also does not show interest expense against these loans in the P&L account. Further, in the proceedings before the DA, no such claim of having received money as loan was ever made and in the present proceeding before me, no evidence has been filed to support and substantiate such claim. In fact, the *Noticee no. 2* did not even file the narration of the bank account transactions (as discussed in detail later). It is strange to believe that *Noticee no.*

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**Order in respect of LFS Broking Private Limited and another**



2 was provided/supported with loan by hundreds of individuals and none of them insisted for execution of agreement to secure such loans. It is equally strange to accept that loan was claimed to have been availed from numerous people and further submitted to have repaid them with interest without any corresponding entry in the IT Return. No evidence was advanced to lay credence to the above submission detailing the nature of business carried out by him that earned him sufficient profit to repay those set of people who advanced loan to him. Therefore, it is seen that the explanation that amounts transferred by the individuals to the account of LFS-PMS were in the nature of loans, is an afterthought exercise, not having any merit for acceptance.

25. The Enquiry Report further notes that the bank accounts of LFS-PMS were being operated by *Noticee no. 2* in capacity of its Proprietor. It has further been noted that there was receipt of large amount of funds in the accounts of LFS-PMS held with Punjab National Bank, HDFC Bank and ICICI Bank, and substantial funds were credited to the IDBI Bank account of LFS-PMS bearing number XXXXX0200XXX8907.

26. It is noted INR 1 Crore were transferred from the PNB Account no XXXX021000X0905, and INR 65 Lakh were transferred from the IDBI Bank account no. XXXXX020000X1649, both belonging to MOL Commodities (another firm of the *Noticee no. 2*), to Mr. Dilip Kumar Maity.

27. It has been submitted before me that Mr. Dilip Kumar Maity owns nursery farms, through which he has provided plants, trees, daily support etc., at the four hotels of *Noticee no. 2*. It has also been submitted that some part of the said transaction was business loan. I note that the said explanations do not provide the bifurcation of the amount paid as loan and the amount paid towards plants etc. Further, no documentary evidence like invoices, GST returns etc., have been filed to support the explanation pertaining to supply of plants etc. The same also becomes important when *Noticee no. 2* in particular is charged of mobilisation of funds from

common people under the garb of exorbitant return using the registration granted to *Noticee no. 1* (which is discussed in detail later). The bank account transfers from the *Noticee no. 2* to the Director of *Noticee no. 1* establishes the connection between *Noticee no. 1* and the raising of money by *Noticee no. 2*.

28. Apart from above transactions, it is also noted that during the proceedings before the DA, the *Noticee no. 2* was advised to provide the explanations of certain bank account transactions (including the ones mentioned in the previous paragraph), however, no details were submitted before the DA. The said details, as captured in the Table no. 2 of the Enquiry Report is reproduced hereunder for ready reference:

**Table no. 3**

Sr. No.	From Account	To Account	Amount (INR)	Details Required
1		L.F.S. P.M.S Services PNB A/c XXXXX0210XXX9928	74.89 crore	1. Source of funds received and name of the entities and amounts received from them 2. Nature of transactions 3. Bills/ vouchers including GST invoices
2	L.F.S. P.M.S Services PNB A/c XXXXX0210XXX9928	L.F.S Broking & P.M.S services PNB A/c XXXXX0210XXX2925	80.32 crore	1. Purpose of fund transfer 2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms

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**Order in respect of LFS Broking Private Limited and another**

Sr. No.	From Account	To Account	Amount (INR)	Details Required
3		L.F.S Broking & P.M.S services PNB A/c XXXXXX0210XXX2925	271.73 crore	1. Source of funds received and name of the entities and amounts received from them 2. Nature of transactions 3. Bills/ vouchers including GST invoices
4	L.F.S Broking & P.M.S services PNB A/c XXXXXX0210XXX2925	LFS Broking and PMS Services IDBI A/c XXXXXX0200XXX8907	265.82 crore	1. Purpose of fund transfer 2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms
5		MOL Commodities PNB A/c XXXXXX0210XXX0905	3.56 crore	1. Source of funds received and name of the entities and amounts received from them 2. Nature of transactions 3. Bills/ vouchers including GST invoices
6	MOL Commodities PNB A/c XXXXXX0210XXX0905	LFS Broking and PMS Services IDBI A/c XXXXXX0200XXX8907	5 crore	1. Purpose of fund transfer 2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms

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Order in respect of LFS Broking Private Limited and another

Sr. No.	From Account	To Account	Amount (INR)	Details Required
7		LFS Broking and PMS Services HDFC Bank A/c XXXXX03XXX0640	39.52 crore	1. Source of funds received and name of the entities and amounts received from them 2. Nature of transactions 3. Bills/ vouchers including GST invoices
8	LFS Broking and PMS Services HDFC Bank A/c XXXXX03XXX0640	LFS Broking and PMS Services IDBI A/c XXXXX0200XXX8907	46.2 crore	1. Purpose of fund transfer 2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms
9		LFS Broking and PMS Services HDFC Bank A/c XXXXX05XXX8501	68.25 crore	1. Source of funds received and name of the entities and amounts received from them 2. Nature of transactions 3. Bills/ vouchers including GST invoices
10	LFS Broking and PMS Services HDFC Bank A/c XXXXX05XXX8501	LFS Broking and PMS Services IDBI A/c XXXXX0200XXX8907	58.5 crore	1. Purpose of fund transfer 2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms

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**Order in respect of LFS Broking Private Limited and another**

Sr. No.	From Account	To Account	Amount (INR)	Details Required
11	Through 2400 transactions	LFS Broking and PMS Services ICICI Bank A/c XXXXX5XX4165	39.5 crore	<ol style="list-style-type: none"> <li>1. Source of funds received and name of the entities and amounts received from them</li> <li>2. Nature of transactions</li> <li>3. Bills/ vouchers including GST invoices</li> </ol>
12	LFS Broking and PMS Services ICICI Bank A/c XXXXX5XX4165	LFS Broking and PMS Services IDBI A/c XXXXX0200XXX8907	29.5 crore (9 transactions)	<ol style="list-style-type: none"> <li>1. Purpose of fund transfer</li> <li>2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms</li> </ol>
13		LFS Broking and PMS Services IDBI A/c XXXXX0200XXX8907	649.51 crore	<ol style="list-style-type: none"> <li>1. Source of funds received and name of the entities and amounts received from them</li> <li>2. Nature of transactions</li> <li>3. Bills/ vouchers including GST invoices</li> </ol>
14	LFS Broking and PMS Services IDBI A/c XXXXX0200XXX8907		655.11 crore	<ol style="list-style-type: none"> <li>1. Purpose of fund transfer</li> <li>2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms</li> </ol>

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Order in respect of LFS Broking Private Limited and another

Sr. No.	From Account	To Account	Amount (INR)	Details Required
15		MOL Commodities IDBI Bank A/c XXXXX0200XXX1649	209.10 crore	1. Source of funds received and name of the entities and amounts received from them 2. Nature of transactions 3. Bills/ vouchers including GST invoices
16	MOL Commodities IDBI Bank A/c XXXXX200XXX1649		209.22 crore	1. Purpose of fund transfer 2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms
17	MOL Commodities/ LFS Broking and PMS services	Saiyad Jiyajur Rahaman or his proprietorship firms HDFC Bank A/c XXXXX34XXX9850	9.3 crore	1. Purpose of fund transfer 2. End use of funds by Mr Saiyad Jiyajur Rahaman or his proprietorship firms
18	MOL Commodities PNB A/c XXXXX0210XXX0905	Dilip Kumar Maity	1 crore	1. Purpose of fund transfer 2. Supporting document
19	MOL Commodities IDBI Bank A/c XXXXX0200XXX1649	Dilip Kumar Maity	65 lakh	1. Purpose of fund transfer 2. Supporting document

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**Order in respect of LFS Broking Private Limited and another**

Sr. No.	From Account	To Account	Amount (INR)	Details Required
20	LFS Broking and PMS Services	6219 clients of LFS Broking Private Limited  (Refer Annexure 10 to the SCN)	266 crore	1. Purpose of fund transfer 2. Supporting documents including GST invoices 3. GST Returns filed during the period - <u>April 01, 2021 to July 31, 2022</u>

29. A broad summary of relevant transactions is captured in the following table:

**Table no. 4**

Sr. No.	Details	Amount
1.	Amounts received by LFS-PMS from clients of <i>Noticee no. 1</i>	INR 266 Crore
2.	Amount received by Mr. Dilip Kumar Maity from MOL Commodities/ LFS-PMS	INR 1.65 Crore
3.	Amount received by <i>Noticee no. 2</i> from MOL Commodities/LFS-PMS	INR 9.3 Crore
4.	Total amount paid on monthly basis by LFS-PMS to 1789 individuals who were also clients of <i>Noticee no. 1</i> during 01/01/2021 to 30/07/2022	INR 7.36 Crore

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**Order in respect of LFS Broking Private Limited and another**

30. Further, in this regard, it is also worth noticing that during the course of personal hearing held before me certain queries were raised and the *Noticee no. 2* was advised to submit the detailed narration of all bank accounts which were requested by the DA. The same has once again not been produced by him. A bare statement made that banks have refused to provide the relevant statements as all the bank accounts have been closed in December 2022 and only a copy of personal bank account of the *Noticee no. 2* held with HDFC Bank has been furnished.
31. I note that the *Noticee no. 2* has not given any explanation to the funds transfer quoted in the Table no. 2 above. I note that a person like *Noticee no. 2* who was having a business with turnover of more than INR 266 Crore cannot take a plea of not having the details of transactions being carried out in the accounts in last few years, when a claim of carrying out business activities has been made.
32. Apart from above, it is also seen that the *Noticee no. 2* has filed IT Returns of the relevant periods during which the business was operational, including Profit & Loss account and balance sheet. The same shows that books of accounts were maintained by him including bank accounts. I observe that based on these books of accounts only, *Noticee no. 2* filed the IT Returns. It is observed that filing of IT Returns shows that *Noticee no. 2* not only had details of his transactions, but also has the narrations of such transactions, which he has for the reason known to him avoided to submit in the present proceedings in his defence to defeat the allegation. Thus, in absence of any supporting documents, I hold that *Noticee no. 2* has failed to prove that the transactions entered with large number of individuals were in the nature of loans advanced to carry out the activities of material supply relating to construction activities.

***III. Whether there are evidences that the activities of Noticee no. 2 offering assured returns are in respect of dealing in securities?***



33. It has been noted that *Noticee no. 2* has failed to provide any evidence for his claim to be in the business of material supply and financial transactions with people were pertaining to his said business. It is also noted that no plausible explanation for the fund transfer to the individuals on regular basis has been furnished. It is noted from the Enquiry Report that the bank account statement of LFS-PMS held with IDBI Bank (Account No.XXXXX0200XXX8907) reflected 9270 instances of fixed payments made to investors on a monthly basis. The said transactions were made to 1789 clients of the *Noticee no. 1* during the period from July 01, 2021 to July 30, 2022 and the total amount involved in such transactions was INR 7.36 Crore (approx.). The Enquiry Report illustrates the payments made to SXXXXa PXXXXd CXXXXXXXXXy and SXXa CXXXXXXXXXy, which shows that they had made an investment of INR 81,50,000 each, and were getting INR 1,63,000 (2% of INR 81,50,000) from December, 2021 to January, 2022. It is further observed that after withdrawal of INR 50,00,000, the said persons started receiving INR 63,000 per month (2% of the remaining amount being INR 31,50,000) till April, 2022. Under the circumstances, *Noticee no. 2* has not only failed in explaining receipt of amount but also failed in explaining with documents, as to why the payment were being made periodically to a large number of investors. I have also observed above that no material evidence has been brought on record to explain and justify the earning of enough profit to repay investors with return at the rate of 2% p.m.

34. It is further observed that by using the registration details of *Noticee no. 1*, LFS-PMS has portrayed before the investors (through Facebook, investor programme etc. discussed earlier at paragraphs 4 and 8), that the money invested with LFS-PMS is being invested with a SEBI registered entity thereby giving an impression that it is related to securities. It is noted that in the Images nos. 1 and 2 (as posted on the Facebook page) that LFS-PMS is offering 2% assured return on the investments made by it. It is also noted that the Facebook page of LFS-PMS was also displaying the registration certificate issued by SEBI to the *Noticee no. 1*. Further, in terms of the video displayed by Aaj Bangla on its YouTube channel,

large number of investors had gathered in the programme organized by LFS-PMS. In the said event, the Executives of *Noticee no. 1* were also present and such Executives stated before public that *Noticee no. 1* was running investment schemes offering assured returns.

35. Based on such acts, and due to the similarity in the names of LFS-PMS and *Noticee no. 1*, it can be reasonably concluded that the investors have paid funds in the assured return scheme related to securities, which may not have been possible without using the registration certificate granted to *Noticee no. 1*.
36. Thus, considering the materials on record, it is found that materials on record sufficiently explain that *Noticee no. 2* was involved in the activities of mobilizing funds from the investors under the promise of assured return related to securities and for said purpose to earn confidence and belief of common people knowingly used the registration number granted to *Noticee no. 1*.

***IV. Whether there are evidences that activities carried out by Noticee no. 2 are well within the knowledge and/or with the consent of the Noticee no. 1?***

37. The Enquiry Report further notes that during April 02, 2021 to June 28, 2022, funds to the tune of INR 9.3 Crore have been received by *Noticee no. 2* from MOL Commodities/LFS-PMS, and out of such amount, INR 1.83 Crore have been transferred to the HDFC Bank account no. XXXXX3400X0090, which is linked to the Proprietary Trading account of *Noticee no. 1* (registered entity). Out of the said amount, an amount of INR 80.67 Lakh was transferred to the Settlement account maintained by the *Noticee no. 1*. In this regard, it is observed that though a submission has been advanced that a Chinese/Fire wall is maintained while carrying out the business activities, however, evidence on record show to the contrary. *Noticees* have not only failed in explaining the transaction with supporting evidence, but at the same time, it is observed that despite claiming of severance of ties, a common response to all the queries raised during the personal hearing has been filed by the *Noticee nos. 1* and *2*. The same shows that both *Noticee nos.*

1 and 2 are non-distinctive entities and the *Notictee no. 2* being the natural person behind *Notictee no. 1*, is controlling all its actions and still having substantial say in the decision making of *Notictee no. 1*.

38. It is noted that a total amount of INR 9.3 Crore was received by the *Notictee no. 2* from his firms namely MOL Commodities and LFS-PMS. Out of the said amount, an amount of INR 1.83 Crore was further transferred to the Proprietary account of *Notictee no. 1* and out of the said INR 1.83 Crore, an amount of INR 80.67 Lakh were transferred to the Settlement account maintained by the *Notictee no. 1* with NSE. It is noted that *Notictee no. 2* had received equity of *Notictee no. 1* against the payment of INR 1 Crore (out of the INR 1.83 Crore). The same shows that large amount of funds were transferred from the firms of *Notictee no. 2*, which were ultimately infused as equity contribution in *Notictee no. 1* (for the benefit of *Notictee no.2*) and used towards Settlement account (an account which is used for trades of clients of the stock-broker), and thus shows that all activities of firms of *Notictee no. 2* were within the knowledge of *Notictee no. 1*.

39. With respect to the query as to how the registration of the *Notictee no. 1* was displayed in the Facebook post of the LFS-PMS (the Proprietorship concern of the *Notictee no. 2*), a vague and untenable answer is given that: “*Since Notictee No. 2 was also the shareholder and Director of the Notictee no. 1 so it may be reason that the companies where Notictee no. 2 was also shareholder were also displayed at social media.*”

40. When the aforesaid evasive answer is read in background of the Images nos. 1 and 2 offering 2% returns to the investors every month, one can observe that there was no firewall between the *Notictee no. 1* (where *Notictee no. 2* was a Director and majority shareholder) and the firms of the *Notictee no. 2*. The Proprietorship firm LFS-PMS, without having any registration with SEBI, was offering 2% per month on the investment amount, and to lure the investors, the registration certificate granted to the *Notictee no. 1* was being placed on the same Facebook page. Even

after noticing the misuse, no FIR was lodged against *Noticee no. 2*. The disclaimer issued in newspapers was a general disclaimer issued after the issuance of show cause notice by NSE and did not point out specific instances of misuse of registration certificate of *Noticee no. 1* by *Noticee no. 2*.

41. It is noted from the Enquiry Report that in the investor awareness camp held in Arambagh (*Noticee no. 1*, LFS-PMS and two other entities namely Moldarin Investments & Leniq Advisors Pvt. Ltd) investors have confirmed to the media personnel that they have invested funds with LFS Broking Private Limited (*Noticee no. 1*) and its associates and they are getting INR 2000 per month on the investment of INR 1 Lakh. Around 30,000 investors had attended the said programme, wherein the executives of the *Noticee no. 1* namely Mr. Saurav Adhikari, Mr. Dilip Kumar Maity, Ms. Soumitra Sinha were also seen as present along with *Noticee no. 2*. In the said event, *Noticee no. 2* was stating that its research team is providing stock tips, thereby minimising the risk and providing returns better than the bank FDs. On a question posed to the *Noticee no. 2* as to how such high returns can be trusted, he replied that the website of LFS Broking and SEBI may be checked. In the same event, the Executives of *Noticee no. 1* stated that *Noticee no. 1* is running investment schemes offering assured returns and they have experts to run such scheme, which shows that there was explicit consent of *Noticee no. 1* for usage of its name in such event. When employees of *Noticee no. 1* along with its Directors are making such claims, *Noticee no. 1* which is a corporate entity comprising of its employees and Directors cannot feign ignorance to such claims.

42. In addition to the above, it is also observed that the factors like presence of all the directors of *Noticee no. 1* (registered entity), usage of logo, referring the investors to SEBI's website etc., in the event for the admitted benefit of LFS-PMS (unregistered entity) further signifies involvement of *Noticee no. 1*.

43. I also note that the Enquiry Report refers to an email communication exchanged between one of the Executive Director of the *Noticee no. 1* (Mr. Soumitra Sinha) and an employee of *Noticee no. 1* pertaining to a Commitment Agreement dated May 15, 2019 between LFS-PMS and one its clients, promising assured return at the rate of 20-36% per annum on an investment of INR 5 Lakh. At this stage, I note that the relevant clause of the said Commitment Agreement reads as: “*According to my own knowledge and after reading all documents, LFS Broking & PMS Services agree 20% to 36% P.A. of profit sharing for our Company can be given every year, No locking Period in both party*” (sic)
44. As the director of the *Noticee no. 1* was sharing the agreements of LFS-PMS executed with an investor, the same shows that there was no firewall between the *Noticee no. 1* and LFS-PMS, and all such acts of LFS-PMS pertaining to fund raising were being carried out with the consent of the *Noticee no. 1*.
45. It is noted that a link of CNBC has been given in the post hearing submissions, stating that assured or guaranteed returns were not mentioned anywhere during such programme. However, it is seen that the said link is not the complete coverage of the event and further, the coverage by Aaj Bangla indicating the interaction with the investors pertaining to the assured return has not been disputed before me. The above discussion is based on the contents of the coverage of Aaj Bangla. Even when specific questions were asked during the proceedings before me, *Noticees* have not been able to defend the allegations made in the proceedings. As can be noted from Question no. IX (page 19), *Noticee no. 1* was asked to provide details of actions taken against its Executives who were participating in the said event. In response, it has been stated that there was a firewall between *Noticee no. 1* and the firms of *Noticee no. 2*. It has further been stated that the Executives of *Noticee no. 1* were there to explain the benefits of stock market investment. Further, in response to the query as to why *Noticee no. 1* referred to SEBI’s website (Question no. XI at page 19-20), it has been stated that *Noticee no.*

2 was referring to the credentials of *Noticee no. 1*. It has further been stated that *Noticee no. 2* was introducing his existing clients about benefits of stock markets

46. It is also noted a claim has been made that after receipt of the show cause notice dated September 22, 2022 from NSE, *Noticee no. 1* had immediately issued a show cause notice to *Noticee no. 2*, asking him to relinquish the directorship. Further, small newspaper notices were issued by *Noticee no. 1* which read as:

*This is to notify that LFS Broking Pvt. Ltd. (SEBI Regn No: INZ000101238 – NSE, BSE, MCX, SEBI Regn No: INP000006721 – PMS: SEBI, Regn No. INH000008127 Research Analyst) doesn't provide any assured return to any clients. Any person making such commitment on electronic and print media is doing at his/her own risk and the Directors/ Employees of LFS Broking Pvt. Ltd. is not responsible for such commitments."*

47. I observe that misuse of registration issued to a corporate entity by its director is a serious issue and merely issuing a show cause notice to such director or issuing public notices without referring to such specific misuse are nothing but weak defence, that does not deserve acceptance.

48. It is seen that the *Noticee no. 1* is alleged to be not satisfying the Fit and Proper criteria prescribed under Schedule II to the Intermediaries Regulations. It is noted that the *Noticee no. 1* has cited few judgments to contend that *Noticee no. 1* being a corporate entity from the *Noticee no. 2* (erstwhile Director) and thus cannot be held liable for any acts or omissions on part of the *Noticee no.2*. I have considered the said submissions and it is observed that the said charge on the *Noticee no. 1* is not based on any singular act of *Noticee no. 2*. As discussed earlier, the name of *Noticee no. 1* was used to entice investors to invest with the unregistered entity (LFS-PMS) and in the programme conducted for the investors, all the directors of the *Noticee no. 1* were present. It is also seen that the *Noticee no. 1* has placed reliance on the judgement of the Hon'ble Supreme Court passed in the matter of

*Sunil Bharti Mittal Vs. CBI.* I note that in the said judgment, Hon'ble Supreme Court has while dealing with the concept of "alter ego" has held as:

*"35. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company."*

49. In the present case, it is an undisputed fact that the *Noticee no. 2* was controlling the affairs of the *Noticee no. 1*, both as director as well as majority shareholder. It is further seen that by the acts of the *Noticee no. 2* discharged in the capacity of director of *Noticee no. 1*, the unregistered firms of the *Noticee no. 2* were perceived to be registered with SEBI and monies were invested by general public. Having gone through the judgment relied upon, I find that the reliance on the said judgment is misplaced. The Hon'ble Supreme Court has held that the principle of alter ego is applicable and a corporate can be held liable for the acts of natural persons managing its affairs. In the instant matter, I have already noted that *Noticee no. 2* was not only controlling majority of the shareholding of *Noticee no. 1* but was also managing its affairs, more particularly during the time when the violations have taken place. Further, as per the video of Aaj Bangla, the employees of *Noticee no. 1* too have been found to be involved in enticing the investors and were informing the investors that *Noticee no. 1* is running investment scheme offering assured returns and they have experts to run such schemes. Infact, the aforesaid judgment of the Hon'ble Supreme Court cited by the *Noticees* actually works against *Noticee no. 2*. Relying on this judgment of the Hon'ble Supreme Court, it can be clearly held that criminality committed by *Noticee no. 2* and other employees can be imputed to *Noticee no. 1*.

50. It has also been submitted before me that arising from the same facts (as of the present proceedings), an action taken by NSE have been stayed by the Hon'ble Securities Appellate Tribunal (SAT). In this connection, I note that the said proceedings of NSE are totally distinct from the present proceedings. Therefore there would not be any bearing of any stay order granted against the order passed by NSE. Further, from the order dated November, 28, 2023, passed by the Hon'ble SAT in the Appeal no. 658 of 2023, titled as LFS Broking Pvt. Ltd. Vs. National Stock Exchange of India Limited, it is noted that the Hon'ble Tribunal has declined to grant stay to the latest order passed by NSE. The relevant portion of the said order of the Hon'ble SAT is reproduced hereunder:

*2. We find that by an order dated November 5, 2022, the Committee of National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE') passed an order of suspension of the appellant as a broker against which an appeal was preferred which was allowed and the order of suspension was set aside by our order dated November 17, 2022. Thereafter, the Committee passed another order dated January 31, 2023 suspending the membership of the appellant which was again set aside by the Tribunal on February 23, 2023.*

*3. Thereafter, pursuant to a show cause notice, the impugned order was passed expelling the appellant from the membership of NSE against which the present appeal has been filed.*

*4. Having heard the learned counsel for the parties at some length, we are of the opinion that no interim order staying the effect and operation of the impugned order can be passed at this state as it would amount to virtually allowing the appeal and permitting the appellant to function as a broker when his license has been terminated. In our opinion, only a final relief could be granted, consequently, we are not inclined to pass any interim order at this stage. The stay application is rejected. (Underline supplied)*



51. From the aforesaid order, it is seen that the order of NSE as applicable on date against the *Noticee no. 1* has not been stayed. Therefore, the stay order passed with respect to previous proceedings will not have any bearing on the present proceedings.

52. Apart from the above, it is also noted that the *Noticee no. 2* was found to be involved in criminal proceedings for carrying foreign currency beyond permissible limit. It is seen that the Enquiry Report records a finding that such an action against *Noticee no. 2* reflects on the integrity, reputation and character of the *Noticee no. 2*. It is noted that in the replies filed before me, no explanation or other details regarding such criminal action have been submitted. Thus, it can be said that the *Noticee no. 2* does not have anything to say on this aspect of criminal actions having initiated against him.

#### **F. Examination of legal issues**

53. As can be noted from the sub-section (1) of section 12 of the SEBI Act, 1992 (quoted in para 16 above), an intermediary associated with the securities market is mandated to buy, sell or deal in securities only in accordance with the conditions of certificate of registration granted by SEBI. Further, clause (e) of the sub-regulation (2) of regulation 7 of the Intermediaries Regulations; clause (e) of regulation 5 of the stock Brokers Regulations, 1992; clause (d) of regulation 35 of the DP Regulations provide that the applicant seeking registration of SEBI needs to be fit and proper person, in terms of the Schedule II of the Intermediaries Regulations. The clause (3) of the Schedule II specifies that in order to assess any person to be “fit and proper”, SEBI may consider any criteria including integrity, honesty, ethical behaviour, reputation, fairness and character of the person. It is also seen that in terms of sub-clause (c) of clause (2) of the Schedule II, the “fit and proper” criteria apply to the promoter or persons holding controlling interest over the entity.

54. Similarly, clause (a) of regulation 11 of Portfolio Managers Regulations mandates that any certificate of registration shall be subject to the condition that the Portfolio manager shall abide by the provisions of the SEBI Act, 1992 and the Portfolio Managers Regulations. Similar provision has been made under clause (i) of the regulation 13 of the RA Regulations.

55. Further, regulation 21 of the Portfolio Managers Regulations prescribes that the Portfolio manager shall abide by the Code of Conduct specified under Schedule III. It is seen that sub-clause (a) of clause 13 of the Schedule III mandates that a Portfolio manager shall abide by the SEBI Act, 1992, rules and regulations made there under.

56. Clause (f) of the regulation 9 of the Stock Brokers Regulations prescribes that the registration granted to an entity shall be subject to the condition that such entity shall abide by the Code of Conduct as specified in Schedule II, at all times. The Code of Conduct prescribes that a stock-broker shall maintain high standards of integrity, promptitude and fairness in conduct of its business. Similar provisions have been made under Regulation 37 of the DP Regulations and sub-regulation (2) of regulation 24 of RA Regulations.

57. As noted in para 2 of this order, *Noticee no. 1* is registered with SEBI in various capacities namely Stock Broker, Portfolio Manager, Depository Participant and Research Analyst. By virtue of such registrations, it becomes incumbent on it to adhere to the respective regulations. The provisions of various regulations discussed in the previous paragraphs stipulate that the registered entity needs to adhere to all the provisions of the SEBI Act, 1992 and the respective regulations. Further, such an entity also needs to be fit and proper and need to maintain high standards of integrity, promptitude and fairness in conduct of its business and to assess the “fit and proper” status, SEBI may consider any criteria including integrity, honesty, reputation etc.

58. It is noted that sub-regulation (1) of regulation 26 of the Intermediaries Regulations provides for issuance of various directions including cancellation of the certificate of registration of an intermediary and debarment of an officer of an intermediary from being employed or associated with securities market for a particular period, as may be specified.

59. At this stage, I refer to the following orders of the Hon'ble SAT passed on the issues of "fit and proper" criteria:

***i. Jermyn Capital Vs. SEBI (2007 74 SCL 246 SAT)***

*In the said matter, the Hon'ble SAT has underscored the importance of reputation and character of a person to determine the fit and proper status by *inter alia* observing as: "the concept of a fit and proper person has a very wide amplitude as the name fit and proper person itself suggests. The Board can take into account any consideration as it deems fit for the purpose of determining whether an applicant or an intermediary seeking registration is a fit and proper person or not. The framers of the Regulations have consciously given such wide powers because of their concern to keep the market clean and free from undesirable elements. It can take into account the financial integrity of the applicant and its competence. Absence of convictions or civil liabilities would be another relevant consideration which could weigh with the Board. Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good. This impression or opinion is generally formed on the basis of the association he has with others and/or on the basis of his past conduct. A person is known by the company he keeps. In the very nature of things, there cannot be any direct evidence in regard to the reputation of a person whether he be an individual or a body corporate. In the case of a body corporate or a firm, the reputation of its whole time director(s) or managing partner(s) would come into focus."*

***ii. Jignesh Shah Vs. SEBI (Appeal no. 500 of 2020; date of decision: April 15, 2021)***

In the said matter, the Hon'ble SAT was confronted with the challenge made to SEBI's finding that FTIL is not fit and proper person as its

Promoter does not carry a good reputation or character. While rejecting all pleas of the appellant, the Hon'ble SAT dismissed the said appeal by *inter alia* observing as:

*"...25. From the aforesaid, it is clear that good reputation and character is a material consideration which is gathered on the basis of the association which the incumbent has with others and/or on the basis of his past conduct. As the saying goes a person is known by the company he keeps. The evidence that has come on record in the instant case clearly indicates that reputation, integrity and character of the appellant Jignesh Shah has been heavily tarnished on account of the massive fraud which he played as is depicted in the FMC's order. Further, Jignesh Shah continues to be the torch bearer of the Company and holds 45% stake as a shareholder. He is virtually controlling the Company and has a significant say in the Company.*

*26. The purity and integrity of the securities market has to be maintained at all times. It cannot be allowed to be tarnished by unscrupulous persons. Persons of doubtful character or undesirable persons should be kept out of the securities market. There is no place for them. In the instant case, there is sufficient material for the respondent to come to a conclusion that the appellant is not a fit and proper person..."*

60. As detailed out in paragraphs 19 to 46, after thorough examination of evidence, it is held that:

- i. *Noticee no. 2* has failed to prove that he through his firm was engaged in the business of construction material supply/Primary Material supply. No documentary evidence in support of such claim has been filed and the other documents like the Income Tax Returns, have not shown any such activity carried out by *Noticee no. 2*.
- ii. *Noticee no. 2* has also failed to prove that the moneys received in the account of LFS-PMS was in form of loans, as no evidence like loan agreement, TDS details, entries in Income Tax Returns etc., have been produced before me.
- iii. *Noticee no. 2* has not been able to establish that the payments made by the investors to LFS-PMS were not mobilised by using the registration

certificates granted by SEBI to *Noticee no. 1* nor has he been able to explain the reasons for monthly payments made to large number of investors.

- iv. *Noticee no. 1* has failed to establish that the money mobilisation activities carried out by *Noticee no. 2* were not with its knowledge/consent as the registration details of *Noticee no. 1* were being used by *Noticee no. 2* and further employees of *Noticee no. 1* were found to be actively involved in luring investors to invest in the schemes of LFS-PMS, for which no action has been taken against such employees.

61. I observe that considering the facts of the matter, necessary action is needed to be taken in this matter to prevent entities like the *Notices* from causing any further damage by acting contrary to the interest of investors of securities market. Allowing the *Noticee no.1*, who had obtained a certificate of registration and found to have knowingly allowed its registration to be used by other entities as well is not in the best interest and the orderly development of the securities market.

62. In view of my above stated findings, I hold that the *Noticee no. 1* has violated the provisions of sub-section (1) of section 12 of the SEBI Act, 1992 read with:

- I. regulation 11 and 21 read with clause 1,3 and 13(a) of the Code of Conduct prescribed in Schedule III of the SEBI (Portfolio Managers) Regulations;
- II. clause (e) of the regulation 5 and regulation 9 read with sub-clauses (1), (3) and (5) of clause A of the Code of Conduct prescribed in Part A of Schedule II of SEBI Stock Brokers Regulations, 1992;
- III. clause (d) of the regulation 35 and regulation 37 read with clause 3 of the Code of Conduct prescribed in Part A Third Schedule of the SEBI (Depositories and Participants Regulations, 2018);

IV. clause (i) of regulation 13 and clause (2) of regulation 24 read with clause 1 of the Code of Conduct prescribed in Third Schedule of SEBI (Research Analysts) Regulations, 2014.

63. It is noted that by virtue of sub-clause (c) of the clause (2) of Schedule II of the Intermediaries Regulations, promoters or the persons holding controlling interest over the intermediary also need to meet the criteria of fit and proper person. I note that since the *Noticee no. 2* has not acted with integrity, honesty and has not displayed ethical behaviour and fairness, he ceases to be a fit and proper person in terms of the Schedule II of the Intermediaries Regulations. Further, due to the conduct of the *Noticee no. 1* enumerated in the present order, where it allowed to use the SEBI registration certificates in collusion with the *Noticee no. 2*, to deceive the investors for illegal mobilisation of funds and the presence of its directors at the event organised to entice investors, I hold that the *Noticee no. 1* is also not satisfying the criteria prescribed under the Intermediaries Regulations.

64. Before concluding, I must note here that an intermediary is an important aspect in the ecosystem of the securities market and has to abide by all the applicable laws. In order to protect the integrity of the securities market and the interest of the investors, checks and balances in forms of regulatory provisions have been laid down. All such provisions when strictly adhered by the intermediaries can only lead to achievement of the mandate of protection of the interest of the investors. However, if any intermediary or persons controlling its affairs are working for their personal benefits, they need to be inflicted with appropriate regulatory action.

65. As noted from sub-section (3) of section 12 of the SEBI Act, 1992 (quoted in para 16), SEBI may by an order, suspend or cancel the certificate of registration in such manner as prescribed under the regulations. Further, in terms of sub-regulation (5) of regulation 27 of the Intermediaries Regulations, after considering the facts and circumstances of the case, material on record and the written

submissions made by the entity, it would be endeavoured to pass the order in 120 days from the date of receipt of the submissions or personal hearing, whichever is later. Further, in terms of section 19 of the SEBI Act, 1992, the power to pass such order has been delegated to Whole Time Members of the Board.

66. In the present case, the written submissions on behalf of *Noticees* were filed on March 15, 2024 and the present order is being passed within 120 days of receipt of said written submissions.

### **G. Order**

67. In view of my findings recorded above, I hereby pass the following directions in the exercise of the powers conferred upon me in terms of the sub-section (3) of section 12 and section 19 of the SEBI Act, 1992 read with sub-regulation (5) of the regulation 27 of the Intermediaries Regulations:

- I. The following certificates of registration granted by SEBI to LFS Broking Private Limited are cancelled:

<b>Intermediary</b>	<b>SEBI Registration Number</b>
Portfolio Manager	INP0000006721
Stock Broker	INZ000101238
Depository Participant	IN-DP-363-2018
Research Analyst	INH000008127

- II. *Noticee no. 2* is debarred from being employed or associated with any registered intermediary or other person associated with the securities market for a period of 5 years.

68. The Order shall come into force with immediate effect.

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**Order in respect of LFS Broking Private Limited and another**

69. *Noticee no. 1* is directed to ensure compliance with the obligations as provided under sub-regulation (2) of regulation 32 of the Intermediaries Regulations, within a period of 30 days from this order.

70. A copy of this Order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

**DATE: 28th JUNE, 2024**

**KAMLESH C. VARSHNEY**

**PLACE: MUMBAI**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**