

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/JR/2024-25/ 30577]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995; AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of
Indian Finance Guaranty Limited
PAN: AAACI2308E

Background

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted inspection of Indian Finance Guaranty Limited (hereinafter referred to as “**Noticee**” / “**IFGL**” / “**the Company**”) on June 19, 2023 to look into various compliance requirements adhered by IGFL. The inspection was conducted for the period beginning April 01, 2022 to May 31, 2022 (hereinafter referred to as “**inspection period**”).

2. Based on the findings of Inspection conducted by SEBI and the response of the Noticee dated August 18, 2023 submitted to SEBI, certain alleged non-compliances were observed of Securities Contracts (Regulations) Rules, 1957 (hereinafter referred to as “**SCRR**”), SEBI (Stock Broker) Regulations, 1992

("Brokers Regulations") and various circulars issued therein. The extracts of the violation alleged to have been committed by the Noticee and corresponding provision of the securities law are given in the tabulation below:

Sr. No.	Alleged Violations (summarized)	Regulatory provisions
A	Engaged in Fund based activities	Rule 8(3)(f) of SCRR read with NSE circular NSE/COMP/50957 dated January 07, 2022 and BSE Notice No.20220107-45 D January 07, 2022
B	Investor Grievance System	Regulation 21(1), 21(2) and 21(4) of Brokers Regulations, Clause A(2) and A(5) as prescribed under Code of conduct read with Regulation 9 of Brokers Regulations, Clause 3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021

APPOINTMENT OF ADJUDICATING OFFICER

- SEBI, vide order dated March 22, 2024, appointed the undersigned as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules 1995**') and also under Section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SC(R)A Adjudication Rules 2005**'), (both the rules collectively to be known as '**Adjudication Rules**') to inquire into and adjudge under the

provisions of section 23H of SCRA and section 15HB of the SEBI Act, the alleged violations of SCRR, Brokers Regulations and various circulars issued therein, alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice (hereinafter being referred to as the “**SCN**”) dated April 16, 2024 was issued to Noticee in terms rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed under section 23H of SCRA and section 15HB of SEBI Act on the Noticee for the aforesaid violations alleged to have been committed by it.

5. The Noticees, vide letter dated February 9, 2024 replied to the SCN stating, inter alia, the following:
 - *It is trite law that Enquiry and Adjudication Proceedings are independent proceedings, which ought to be carried out independently. In other words, the simultaneous appointment of an individual to serve in dual capacities as the AO and the DA runs counter to the foundational principles and objectives of Adjudication as well as the Enquiry proceedings. This dual role inherently undermines the requisite independence that is integral to ensuring fair and impartial proceedings against a Noticee. The appointment of a single individual to occupy both positions raises concerns about the potential conflicts of interest and the preservation of a neutral stance in the decision-making process. It is also submitted that such a confluence of roles not only deviates from the intended scheme of adjudication but also jeopardizes the credibility and integrity of the adjudicatory framework. Therefore, it is submitted that careful consideration should be given to preserving the autonomy and impartiality of roles of the Ld. AO and the Ld. DA in order to uphold the integrity of the simultaneous proceedings against the Noticee.*

- *It is respectfully denied that we have engaged as a principal in a business other than that of securities involving personal financial liability. With regard to the allegation that the Noticee had taken unsecured loans from multiple entities amounting to Rs. 7.81 Crores, it is respectfully submitted that by taking unsecured loan, the Noticee did not violate any provisions of law governing securities market as it is permissible under the law. It is submitted that the Noticee has availed unsecured loan facilities from the entities only for the purpose of running our securities business smoothly and it is duly permitted by SEBI. The Noticee would like to bring your kind attention to SEBI circular bearing no. SMD/POLICY/CIR-6 dated May 7, 1997. The operative part of the said SEBI circular as under:*

"It has been opined that borrowing and lending of funds, by a trading member, in connection with or incidental to or consequential upon the securities business, would not be disqualified under Rule 8(1)(f) and 8(3)(f)"

- *In this regard it is respectfully submitted that the stock broker is permitted to avail loan facility to meet the working capital requirements from the entity who is registered with the stock broker as client if the registered client is a Director, associate or group company of the stock broker. The Noticee would like to bring to your kind attention to BSE circular bearing no. 20220922-49 dated 22.09.2022 and NSE Circular bearing NO. 68/2022 dated 22.09.2022 on the subject "Clarification to the Rule 8(1)(f) and 8(3)(f) of Securities Contracts (Regulation) Rules, 1957". Vide the said circulars, BSE and NSE have clarified Point no. 7 of BSE circular bearing no. 20220107 45 dated January 07, 2022 and NSE circular NSE/COMP/50957 dated January 07, 2022.*
- *It is respectfully submitted that the following 6 entities are our group / associates companies based on common shareholders/ directors and more particularly Key persons who have significant influence on the business decisions of the observed 6 entities who are*

registered clients of the Noticee. It is necessary to submit the relation of the Noticee with 6 given clients.

➤ Relation of the Noticee with 6 given clients as under:

Sl. No.	Name	Relation
1	Ancient Education Pvt. Ltd.	Mr. Ashish Kumar Singh & Mr. Sanjay Pathak are shareholders. Mr. Shrawan & Mr. Surendra Kumar is the director. Mr. Rajneesh Kumar, Mr. Surendra Kumar and Mr. Ravi Kant Sharma was a key person. Mr. Rajneesh Kumar is also one of the authorized signatories in the bank account of the Entity.
2	Bailey Builders and Developers Pvt. Ltd.	Mr. Ashish Kumar Singh & Mr. Sanjay Pathak are shareholders. Mr. Shrawan & Mr. Surendra Kumar is the director. Mr. Rajneesh Kumar, Mr. Surendra Kumar and Mr. Ravi Kant Sharma was a key person. Mr. Rajneesh Kumar is also one of the authorised signatories in the bank account of the Entity.
3	Jitney Investments Pvt. Ltd.	Mr. Ashish Kumar Singh & Mr. Sanjay Pathak are shareholders. Mr. Shrawan & Mr. Surendra Kumar is the director. Mr. Rajneesh Kumar, Mr. Surendra Kumar and Mr. Ravi Kant Sharma was a key person. Mr. Rajneesh Kumar is also one of the authorized signatories in the bank account of the Entity.
4	Orion Retail Pvt. Ltd.	Mr. Ashish Kumar Singh & Mr. Sanjay Pathak are shareholders. Mr. Shrawan & Mr. Surendra Kumar is the director. Mr. Rajneesh Kumar, Mr. Surendra Kumar and Mr. Ravi Kant Sharma is a key person.
5	Spire Marketing Pvt. Ltd.	Present and past directors are Rajneesh Kumar, Ashish Kumar Singh, Sanjay Kumar Pathak. Mr. Rajneesh Kumar, a Key Person. Mr. Rajneesh Kumar is also one of the authorised signatories in the bank account of the Entity.
6	Splendid Hotels & resorts Pvt. Ltd.	Ram Bhagat Sharma is a shareholder. Mr. Shrawan & Mr. Surendra Kumar are directors. Mr. Rajneesh Kumar, Mr. Surendra Kumar and Mr. Ravi Kant Sharma are Key persons.

- *As aforesaid, it is reiterated that Mr. Rajneesh Kumar, who is DPG and director of the Noticee is solely a key person of all aforementioned 6. He has significant influence and control on the business decisions of above mentioned 6 entities who are registered clients of the Noticee and on this ground alone, above mentioned 6 entities shall be treated as Associates of the Noticee in terms of Section 2(6) of the Companies Act, 2013 and Regulation 2(1)(b) of LODR. In addition to this, there are common shareholders, promoters, directors and key persons as mentioned in the above table.*
- *For better appreciation it is relevant to bring to your attention to Section 2(6) of the Companies Act, 2013 read with Regulation 2(1)(b) of LODR which state as under:*
- Associate company', in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.*
- Explanation – For the purpose of this clause --*
- (a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;*
- the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;*
- *As aforesaid, Mr. Rajneesh Kumar directly or indirectly, by himself or in combination with other persons, exercises control over all above mentioned 6 entities. More to add, it is also relevant to submit here that Ld. WTM has passed an ex-parte order bearing no. WTM/SM/ISD/ISD-SEC-4/23158/2022-23 dated 25.01.2023 whereby*

it has been clearly held that above mentioned 6 entities are related to Mr. Rajneesh Kumar who is DPG and director of the Noticee.

- *The Noticee also brings to your kind attention to last para (operative part) of NSE circular NSE/COMP/50957 dated January 07, 2022 which state that "..... based on the gravity of the violation, the relevant authority of the Exchange shall deal with such non-compliances after following the due process and providing the necessary opportunity to the trading members for clarification in the matter..." In other words, the said circular indicates that it is not necessary to take coercive action and impose monetary penalties in case violation of Rule 8(1)(f) and 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 is observed. It depends upon the gravity of offence. In the instant case, SCN did not allege any high altitude of gravity of violation on the part of the Noticee. Therefore, imposing a monetary penalty is uncalled and unwarranted.*
- *It may kindly be noted that instead of asking anything, the Noticee has rendered its full co• operation, assistance and facilitated access of required data/ system/ computer with back-office and internet access.*
- *Pertinently, the Noticee would like to bring your kind attention to the fact that access of investor grievance email id was given to IT around 12:45 PM on 19.06.2023 and IT had already searched and verified the entire communication exchanged over said email id.*
- *It may kindly be noted that the Noticee not only agreed to show, but also given the access of the investor grievance email account by handing over a system with internet connection and logged email account cyberrajneesh@gmail.com.*
- *It is emphatically submitted that IT has searched the entire Inbox, Outbox, sent items of the said email account by putting different sets of key words in the search bar relating to investor complaints. When nothing was found related to investor grievances, then one officer of the inspection team Sh Ashutosh Singh Rawat started to open other emails which were directly or indirectly not related to the stock broking*

business of IFGL. For Example, the inspection team had opened an email communication exchanged with a person through his email id info@tcagroup.in. This email id does not belong to any investors or even persons who are not related to the stock broking business of the Noticee.

- *But the IT sent email at 1:04:51 PM and 03:08 PM stating that "the access to the said email id has not been provided to the inspection team till now" with purpose to show that the Noticee did not give access of investor grievance email id to IT which is completely incorrect.*
- *With regard to providing designated email id for investor grievances, it was duly appreciated in the SCN that the Noticee has provided and displayed cyberrajneesh@gmail.com as investor grievance redressal email id and thus not violated SEBI's directions to brokers to provide designated email id for investor grievances.*
- *More to add, it is also relevant to submit the meaning of the word "Exclusive" given in the Dictionary. As per the Dictionary, the meaning of the word Exclusive is "to be used by or given to one person, group, etc.; not to be shared". It may be appreciated that the said email id is given for the investor grievance only for registering their grievances if any and the said email id was exclusively accessed by the CEO of the Noticee.*
- *It is on record and duly appreciated in SCN that Mr. Rajneesh Kumar is Director cum compliance officer of the Noticee. The Noticee brings to your kind attention to Annexure 3 of SCN which clearly shows email id of compliance officer is rajneesh@ifgl.info which is created exclusively for official work of the Noticee and access of the said email id is given to other concern staff of the Noticee who are looking after compliance related work and email id indianfinance@ifgl.info was displayed exclusively for investors grievances and access of this email id was also given to concerned staff. It may kindly be noted that one of the employees named Mayank*

Shekhar was deputed to address the query/ grievance of a client that he raised on email id indianfinance@ifgl.info. But it later come to the knowledge of Mr. Rajneesh Kumar that Mr. Mayank Shekhar did not provide proper response to the query of a client of the Noticee. Pertinently, it may kindly be noted that the Noticee also followed the process to take feedback of client telephonically from time to time on random basis and during this feedback drive, client raised non-responsive approach of the employee and the incident was reported to Mr. Rajneesh Kumar. It may kindly be noted that when Mr. Rajneesh Kumar wanted to find out the veracity of the issue, the said employee of the Noticee had deleted that email with purpose to conceal the issue from escalation before senior management. This fact came into the knowledge of Mr. Rajneesh Kumar he took additional corrective measures and gave his personal email id qua cyberrajneesh@gmail.com as a investor grievance email id with sole purpose to address the issue of clients on real time basis without fail. The change in investor grievance email id was made in order to ensure that investor's complaints/ queries get priority and utmost attention. It is also respectfully submitted that the Regulator did not debar to provide personal email id for official work purpose and since this is not expressly debarred by any Regulator, thus the Notice has not violated provision of SEBI in this regard.

- *It is submitted with humility that Mr. Rajneesh Kumar is also engaged in different business and occupation and communication related to other business are also exchanged through the said email id which is not related to stock broking business of the Noticee directly or indirectly. Therefore, the Noticee had humbly objected to the opening and reading of personal emails exchanged for other work purposes. It was a breach of right to privacy and data. So, the Noticee objected to his high handedness and requested him to stop misuse of power and to not abuse the process of law.*

- *As aforesaid, the Noticee respectfully submit that it has availed unsecured loan from only those registered clients who are director / shareholders / group company / associates and this is covered under exception given in NSE and BSE circular dated 22.09.2022.*
- *It is respectfully submitted that the Noticee has produced to the inspecting authority such books, accounts and other documents in its custody or control and furnished all required statements and information relating to the transactions in the securities market before given time frame as per the requirement of IT.*
- *The Noticee has allowed the inspecting authority to have reasonable access to the premises of the Noticee and also extended reasonable facility for examining books, records, documents and computer data in the possession of the Noticee and also provided copies of documents or other materials which, the IT has directed to furnish. The Noticee has assisted, facilitated all required reasonable resources to IT to carry out inspection of books of account and other related area.*
- *It is submitted that the Noticee has acted with due skill, care and diligence in the conduct of all its stock broking business. The Noticee abided 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 on the Noticee.*
- *As aforesaid, the Noticee has provided access to the IG email id to the inspection team and are still willing to provide the same for searching of investor grievance related communications. Further, the Noticee also produced all relevant and required data to the inspection team and the same is evident on the face of the SCN. In addition to access to IG email id, the Noticee also provided reasonable access to office premises and also extended reasonable facility for examining its books, records, documents and computer data as well as providing copies of documents or other materials which, in the opinion of the inspecting authority, are relevant and demanded.*
- *Further, the Noticee has disseminated exclusive email id for investors grievances in which the investors would be able to*

register their complaints and also take necessary follow-up actions as necessary. Further, data on complaints received against the Noticee and its details of redressal is being displayed on the website of the Noticee.

- *It is respectfully submitted that the NSE has also conducted inspection of books of account of the Noticee during the period 01.01.2023 to 31.12.2023 and common violations as alleged in the SCN has been observed and also proposed monetary penalty amount.*
- *With regard to allegation related to investor charter, it is submitted that investor charter for depository participant as well as investor charter for the stock broker and data regarding complaints were available on the website of the Noticee at the time of inspection but it was under maintenance process on the day of inspection and the process to upload updated compliance related information/ documents was underway. Certain information was already updated and certain were pending for updating when the inspection team verified the contents of the website of the Noticee. Later, investor charter for stock broker and data regarding complaints were updated on website.*
- *NSE alleged following common observation vide its letter of observation dated 15.04.2024.*
 - i) *Member has engaged as a principal in a business other than that of securities involving personal financial liability.*
 - ii) *Member has entered into arrangement with registered clients for borrowing funds or taking loans.*
- *The Noticee respectfully submits that alleged violations have been juridically decided on its merits only for once for the same violation observed during the same period. Hence, either SEBI or NSE may drop proceedings against the Noticee as far as observations related to Rule 8(3)(f) of SCRR.*

6. In the interest of natural justice, an opportunity of personal hearing was given to the Noticee on June 4, 2024 vide notice dated May 21, 2024. Vide email dated June 3, 2024, the Noticee sought for an adjournment. Acceding to its request another opportunity of personal hearing was given to the Noticee on June 24, 2024. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated February 9, 2024. It also made further submissions vide email/letter dated July 1, 2024 stating, inter alia, the following:

- *As submitted during personal hearing and its reply It is respectfully submitted that the NSE has also conducted inspection of books of account of the Noticee for the period 01.01.2023 to 31.12.2023 and common violations as alleged in the SCN has been observed.*
- *It is pertinent to highlight that the vide its observation letter dated 15.04.2024 has proposed the monetary penalty for Rs. 2,77,400/- for the aforementioned alleged violation. Details of Alleged violation pertain to following dates:*
 - *Member has engaged as a principal in a business other than that of securities involving personal financial liability: Member has outstanding receivable towards loans & advances amounting to Rs. 14.35 Lakhs from one of its directors as on date 01.04.2023.*
 - *Member has entered into arrangement with registered clients for borrowing funds or taking loans: Details of Outstanding funds payable to the registered clients.*

<i>UCC</i>	<i>Name</i>	<i>Opening balance payable as on 01-Jan-2023 (Rs. In Lakh)</i>
<i>HV21</i>	<i>Ancient Education Pvt. Ltd.</i>	<i>47.64</i>
<i>HV52</i>	<i>Orion Retail Pvt. Ltd.</i>	<i>120.273</i>

HV49	<i>Splendid Hotels & Resorts Pvt. Ltd.</i>	123.551
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- *The Noticee respectfully submits that alleged violations have been juridically decided on its merits only for once for the same violation observed during the same period. Hence, either SEBI or NSE may drop proceedings against the Noticee as far as observations related to Rule 8(3)(f) of SCRR.*
- *In Addition to the submission made in reply that following six entities are associates of IFGL, it is submitted that the Rajneesh Kumar was one of director and authorised signatory in bank of following five entities who are registered clients of IFGL.*

S. No.	Name
1	<i>Ancient Education Private Limited</i>
2	<i>Balley Builders and Developers Pvt Ltd</i>
3	<i>Jitney Investments Private Limited</i>
4	<i>Orion Retail Pvt Ltd</i>
5	<i>Spire Marketing Private Limited</i>
6	<i>Splendid Hotels and Resorts Pvt Ltd</i>

- *It is also submitted that Mrs Seema Sharma, wife of Rajneesh Kumar was director and promoter of the 6 entity i.e. Orion Retail Pvt. Ltd. And therefore Rajneesh Kumar has significant influence in this company too.*
- *During the directorship of the aforementioned entities, Mr. Rajneesh Kumar is procuring business for the company and therefore he has significant influence in the Company.*
- *Later, Mr. Rajneesh Kumar had resigned from the office of director of aforementioned entities but board of directors of all 6 entities wanted to retain his business procurement ability and thus willing to accept his business decision to be taken severally or jointly from the date of his*

agreement. In this connection, aforementioned six entities have delegated power through an agreement i.e. Memorandum of Understanding for initial period of five years. Later on the date of expiry, power to take business decision has been extended for further 5 years.

- Pertinently, Rajneesh Kumar, promoters and director of the Noticee is still authorised signatory in the bank accounts of abovementioned five entities. This clearly shows that Mr. Rajneesh Kumar has not only control and influence on business, he has also control on financials of the six entities.
- Vide ex-parte interim order dated 25.01.2023, SEBI has observed that following 6 entities are front entities of Rajneesh Kumar and latter same was confirmed by Final Order.
- As submitted in reply, SEBI has passed ex-parte interim order cum Show Cause Notice bearing no. WTM/SM/ISD/ISD-SEC-4/23158/2022-23 dated 25.01.2023 in the matter of Superior Finlease Ltd. (SFL). Vide the interim order, Ld. WTM held that Mr. Rajneesh Kumar who is promoter and director of the Noticee, directly or indirectly, by himself or in combination with other persons, exercises control over all aforementioned six entities. It was further held that the said six entities who are registered clients of the Noticee, have acted as front entities of Mr. Rajneesh Kumar. Rajneesh Kumar submitted his reply and SEBI passed final order dated 22.05.2024 wherein it was confirmed by Ld. WTM that Rajneesh Kumar used them as front entities.

CONSIDERATION FOR ISSUES, EVIDENCE AND FINDINGS

7. I have taken into consideration the facts and circumstances of the case and the material available on record. The Noticee submitted that simultaneous appointment of the same individual to serve both as an Adjudicating Officer and Designated Authority (hereinafter referred to as “DA”) runs counter to the objectives of the adjudication and enquiry proceedings and raises concern

about the fact potential conflicts of interest and preservation of neutral stance in the decision making process. I note that the Adjudicating Officer is appointed under section 15I of the SEBI act and section 23I of the SCRA to conduct adjudication proceedings as per the Adjudication rules and impose monetary penalty. DA is appointed under regulation 24 of SEBI (Intermediaries) Regulations, 2008 to hold enquiry and recommend measures under regulation 26 including cancellation of the certificate of registration, suspension of the certificate of registration for certain period, issuance of regulatory censure etc. Once the recommendation is given by the DA, the competent authority passes the final order in the matter after considering the written reply and hearing the Noticee. Therefore, it is clear that in adjudication proceedings, the order is passed by the Adjudicating Officer whereas in enquiry he/she only gives recommendation and the final order is passed by the competent authority.

8. The issues that arise for consideration in the present case are:

ISSUE I- Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:-

- i. Engagement in Fund based activities
- ii. Investor Grievance System

ISSUE II- Does the violation, if any, attract monetary penalty under section 23H of SCRA and 15HB of the SEBI Act?

ISSUE III- If so, how much penalty should be imposed taking into consideration the factors mentioned in section 23J of SCRA and section 15J of the SEBI Act?

9. The said provisions under which violations have been alleged against the Noticee are reproduced below –

Rule 8(3)(f) of SCRR

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

(f) he engages either as principal or employee in any business other than that of Securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that—

(i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items [(a) to (n)] of sub-rule (8)].

NSE circular NSE/COMP/50957 dated January 07, 2022

<https://nsearchives.nseindia.com/content/circulars/COMP50957.pdf>

BSE Notice No.20220107-45 D January 07, 2022

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20220107-45>

Regulation 21(1), 21(2) and 21(4) of Brokers Regulations

Obligations of stock-broker on inspection by the Board.

21. (1) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require.

(2) The stock-broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock-broker or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority are relevant.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock broker to give to the inspecting authority all assistance in connection with the inspection, which the stock broker may reasonably be expected to give.

Clause A(2) and A(5) as prescribed under Code of conduct read with Regulation 9 of Brokers Regulations

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business

(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.

9. Conditions of registration.

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 twenty-one calendar days 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.

Clause 3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 02, 2021

3) Additionally, in order to bring about transparency in the Investor Grievance Redressal Mechanism, it has been decided that all the Stock Brokers shall disclose on their respective websites, the data on complaints received against them or against issues dealt by them and redressal thereof, latest by 7th of succeeding month, as per the format enclosed at Annexure 'B' to this circular.

FINDINGS

10. On perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case I record my findings hereunder:

ISSUE I: (a)-Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:-

Engagement in Fund based activities

11. It is alleged that during verification of Trial Balance as on May 31, 2023 and Bank books for the inspection period, it is observed that the Noticee has taken unsecured loans from multiple entities amounting to Rs. 7.81 Crores out of which Rs. 4.49 Crores were taken from 6 registered clients. The details are given below:

Sr No	Name	Amount Outstanding On 31-05-23	UCC
1	Ancient Education Private Limited	47,39,354.60	HV21

2	Balley Builders and Developers Pvt Ltd	57,47,013.14	HV54
3	Jitney Investments Private Limited	32,13,317.50	HV50
4	Orion Retail Pvt Ltd	1,17,27,698.00	HV52
5	Spire Marketing Private Limited	72,81,592.62	HV53
6	Splendid Hotels and Resorts Pvt Ltd	1,22,40,120.60	HV49
Total		4,49,49,096.46	

12. In view of the above, it is alleged that the Noticee has violated Rule 8(3)(f) of SCRR read with NSE circular NSE/COMP/50957 dated January 07, 2022 and BSE Notice No.20220107-45 D January 07, 2022.
13. The Noticee submitted that the 6 clients from whom loans were taken are associate companies, therefore, there is no bar in taking loans from them for working capital requirements as per BSE circular 20220922-49 dated September 22, 2022 and NSE circular 68/2022 dated September 22, 2022. The Noticee further submitted that vide order dated May 22, 2024, Whole Time Member of SEBI held that Mr. Rajneesh Kumar who is a promoter and director of the Noticee exercises control over the aforesaid 6 entities.
14. Rule 8(3)(f) of SCRR requires that members of stock exchange shall not engage either as principal or employee, in any business, other than that of securities or commodity derivatives, except as a broker or agent, not involving any personal financial liability. NSE circular NSE/COMP/50957 dated January 7, 2022 provides an illustrative list of activities that are construed as non-compliance to rule 8(3)(f) of SCRR which includes: “7. *Any arrangement with registered clients to borrow funds/loans*”. Further vide BSE circular bearing no. 20220922-49 dated September 22, 2022 and NSE Circular bearing No. 68/2022 dated September 22, 2022, it is clarified that, “*If the lender (who is also a registered client of member) is a director, associate or group company, then members, who are constituted as a company, are permitted to take loans from such clients to meet the working capital requirements.*”

15. Associate company is defined under section 2(6) of the Companies Act, 2013 wherein it is stated that *“associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.* Further, clause(a) of the Explanation states that *‘the expression “significant influence” means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.’*
16. It is observed that Mr. Rajneesh Kumar is the promoter and director of the Noticee. Further, the Noticee also submitted copies of Memorandum of Understanding by the 6 client companies wherein it is clearly mentioned that Mr. Rajneesh Kumar is the authorised signatory in bank accounts of the company and key management personnel for the core business activities. Hence, it is established that Mr. Rajneesh Kumar controls and participates in business decisions of these client companies. Therefore, it can be concluded that the 6 client companies are associate companies of the Noticee. Further, this is corroborated by Whole Time Member, SEBI in his order dated May 22, 2024 in the matter of Superior Finlease Ltd. wherein he has held that Mr. Rajneesh Kumar directly or indirectly, by himself or in combination with other persons, exercises control over all above mentioned 6 entities.
17. In view of the above, I find that the client companies from whom the Noticee had taken loan are associate companies and therefore, the allegation of violation of Rule 8(3)(f) of SCRR read with NSE circular NSE/COMP/50957 dated January 07, 2022 and BSE Notice No.20220107-45 D January 07, 2022 against the Noticee does not stand established.

Investor Grievance System

18. During the inspection of the Noticee at its office, it was observed that on the display board installed at the premises, the email id mentioned for filing investor grievances is mentioned as cyberrajneesh@gmail.com. The said email id is also mentioned at the escalation matrix mentioned on the website of the broker. Noticee was advised to allow inspection team to access the said email id to examine the complaints received and redressal of the complaints. The CEO cum compliance officer of the Noticee Shri Rajneesh Kumar, initially agreed to show the said email id to the inspection team. However, when the team observed alleged suspicious emails in the inbox related to investor complaints, he allegedly objected by stating that he has personal emails in the inbox and he can't allow access to such emails, as it is his private email id and may result in the breach of his privacy. Hence, this is alleged to be in violation of SEBI directions to brokers to provide designated email id for investor grievances. It is further alleged that there was non-co-operation on behalf of the Noticee with respect to examination of investor grievances.
19. Further, it is alleged that due to this non-cooperation, the inspection with respect to the redressal of investor grievances remained inconclusive.
20. Furthermore, as admitted by the CEO cum compliance officer, he uses the email id cyberrajneesh@gmail.com for personal use also. As already mentioned above, this email id is mentioned by the Noticee on its display board as concerned email id for investor grievance. This is allegedly in violation of SEBI directions to brokers to designate an exclusive e-mail ID of the grievance redressal division / compliance officer in which the investors would be able to register their complaints and also take necessary follow-up actions as necessary.

21. On perusal of the website of the Noticee, it is observed that while the investor charter for depository participant is available on the website, the investor charter for the stock broker is not available therein. Further, data regarding complaints is also not available on the broker website.
22. In view of the above, it is alleged that the Noticee has violated Regulation 21(1), 21(2) and 21(4) of Brokers Regulations, Clause A(2) and A(5) as prescribed under Code of conduct read with Regulation 9 of Brokers Regulations and Clause 3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 2, 2021.
23. Noticee submitted that it had extended its full co-operation with the inspection team (hereinafter referred to as "IT") including giving access to the email id cyberrajneesh@gmail.com, which is also personal email id of the director Mr. Rajneesh Kumar. Noticee contended that it had stopped the IT from accessing the personal emails and hence IT established that the inspection was inconclusive.
24. It is observed from the submission of the Noticee that it had designated the personal email id of Mr. Rajneesh as the email id for registering investor complaints. This is in violation of SEBI directions wherein it is instructed that brokers to provide designated email ids which will cater to investor complaints solely for further follow-up actions. However, the personal email id of its promoter and director Mr. Rajneesh was mentioned as concerned email id for investor complaints on its display board.
25. When the Noticee had designated cyberrajneesh@gmail.com as the official email id to address investor complaints, it should have given its full access to the IT for the purpose of inspection which the Noticee did not do. Further, when a personal email id is used for registering investor complaints, there is always a likelihood that any complaint is missed amongst the personal emails received in the email id.

26. It is further observed that the Noticee submitted that on the day of inspection, the IT could not access the investor charter of the broker as the website was under maintenance. However, subsequently, the URL of the website was sent to the IT. On perusal of the website, it was noted that though the investor charter for depository participant is available on the website, the investor charter for the stock broker was not available therein. SEBI has framed Investor Charter to promote transparency, enhance awareness, trust and confidence among the investors. The Investor Charter, inter alia, includes the vision and mission statement, rights and responsibilities of investors, investor grievance redressal mechanism and Do's and Don'ts for investing in securities market. The Investor Charter also gives a broader perspective of various rights and responsibilities of investors. Therefore, to promote the securities market and protect the investors' interest, it was the duty of the Noticee to publish the investor charter for the stock broker on their website.
27. Further, the website of the Noticee did not have the data regarding the investor complaints and the details about its redressal. In its submission, the Noticee stated that it is being displayed. On perusal of its website at the time of passing the order, it is noted that the data has last been updated for the month of April 2024. As per clause 3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 2, 2021, stock brokers should disclose on their websites, the data on complaints received against them or against issues dealt by them and redressal thereof latest by 7th of succeeding month. It is observed that the Noticee failed to do so.
28. In view of the above, I find that the allegation of violation of regulation 21(1), 21(2) and 21(4) of Brokers Regulations, Clause A(2) and A(5) as prescribed under Code of conduct read with regulation 9 of Brokers Regulations and clause 3 of SEBI Circular SEBI/HO/MIRSD/DOP/P/CIR/2021/676 dated December 2, 2021 by the Noticee stands established.

ISSUE II- Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?

29. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not."
30. Therefore, the aforesaid violations committed attract monetary penalty under Section 15HB of the SEBI Act on the Noticee. The text of provision is reproduced hereunder:

Section 15HB of SEBI Act: -

Penalty for contravention where no separate penalty has been provided: Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

ISSUE III- If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

31. While determining the quantum of penalty under SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act which reads as under:

Factors to be taken into account by the adjudicating officer under SEBI Act 15J. While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default

32. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of its failure nor has it been alleged by SEBI. As regard to the repetitive nature of the default, there is nothing on record to show that the nature of default by the Noticee is repetitive.

33. I find that the Noticee was under a statutory obligation to abide by and comply with the provisions of the Circulars / directions issued by SEBI and stock exchanges, which they failed to do during the inspection period and continue till date. The very purpose of the said provisions is to deter wrongdoing and promote ethical conduct in securities market. Noticee being a registered intermediary is expected to take the statutory compliances seriously and take extra care to maintain a high degree of professionalism in the conduct of their business. The violations as established above certainly deserve imposition of penalty. In this regard, it is pertinent to mention the judgement of Hon'ble Securities and Appellate Tribunal (Hon'ble 'SAT') in the matter of Bezel Stock Brokers Pvt.Ltd. vs National Stock Exchange of India (Appeal No. 294 of 2018 decided on January 30, 2019). Hon'ble SAT held "*The appellant had failed to act in a diligent manner and had failed to protect the interest of his clients*".

ORDER

34. Having considered the facts and circumstances of the case, the factors mentioned in section 15J of SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995 I hereby impose following penalty of Rs.4,00,000/- (Rupees Four Lakh only only) under section 15 HB of the SEBI Act on the Noticee. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.
35. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.
36. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to Securities and Exchange Board of India.

DATE: July 22, 2024

PLACE: MUMBAI

**BARNALI MUKHERJEE
ADJUDICATING OFFICER**