

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AM/AO-142/2014

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

Mr. Jalpeshkumar Amrutlal Makwana

(PAN -AXLPM4291R)

In the Matter of: Alderbrooke Portfolio Management Services Pvt. Ltd.

BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) on receipt of a complaint came to know that a company, Alderbrooke Portfolio Management Services Private Limited (**APMS/Company**) was offering financial products/ services for individual/ corporate clients with guaranteed returns. A preliminary examination of the matter revealed that APMS was not registered with SEBI in any capacity and was a client of broker, Sharekhan Limited. SEBI vide its various letters asked APMS to furnish certain details/ information including the details of its activities and shareholders/ directors, details of clients and the services provided to such clients, details of all demat accounts held in its name, Memorandum of Understanding (**MoU**) entered with the clients and the details of the activities based on the MoU, etc. in order to ascertain the nature of its business. APMS submitted the details sought by SEBI and said that it neither offered any product with guaranteed monthly return nor did it provide any kind of portfolio management services. However, it was observed that APMS was a private limited company incorporated on March 03, 2010 and investors interested in availing the services of APMS were made to enter into an MoU with APMS, enabling it to manage their funds. It was also observed that the trading activities were carried out

either through the trading account of APMS or through the individual account of the client. APMS had submitted that it was engaged in the financial hedging in the stock market and they sold the options to receive premium and in order to safeguard their position they also bought options. APMS had also submitted that in case they did not get the desired results the position was rolled over.

2. Having *prima facie* found that APMS was collecting funds and indulging in unauthorized portfolio management activities by entering into agreement/ MoU with the clients and managing their portfolio/ funds without obtaining registration from SEBI, SEBI issued an ad interim ex-parte order dated December 20, 2013 (**interim Order**) against APMS and its directors namely Mr. Jalpeshkumar Amrutlal Makwana (**Noticee/Jalpeshkumar**) and Mr. Anandkumar Kanubhai Ravat (**Anandkumar**). Subsequent to the interim Order and submissions of APMS, Jalpeshkumar and Anandkumar; SEBI issued order dated April 01, 2014 (**final Order**) in which APMS, Jalpeshkumar and Anandkumar were directed to cease and desist from acting as an unregistered portfolio manager and not to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any manner whatsoever without proper authorization/ registration. In the said final Order, APMS, Jalpeshkumar and Anandkumar were restrained from accessing the securities market and further prohibited from buying, selling or dealing in the securities market, either directly or indirectly or being associated with the securities market in any manner whatsoever, for a period of five years. In view of the seriousness of the violations, the matter was referred for adjudication in order to levy suitable monetary penalty against APMS and its directors for violating the applicable provisions of law.
3. The undersigned was appointed as the Adjudicating Officer vide order dated April 25, 2014 and the said appointment was conveyed vide proceedings of the Whole Time Member dated April 29, 2014 to inquire and adjudge under Section 15HB of the SEBI Act, 1992, the alleged violations of provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993 (**PM Regulations**) committed by the Noticee.

SHOW CAUSE NOTICE, HEARING & REPLY

4. Show Cause Notice (**SCN**) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) was issued to the Noticee on June 23, 2014, calling upon the Noticee to show cause why an inquiry should not be held against it under Rule 4(3) of the Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act, 1992 for the alleged violations.
5. The aforesaid SCN was sent by Speed Post – AD which returned undelivered with comments “left”. Thereafter, a copy of the said SCN was forwarded to the Noticee by letter dated July 09, 2014 and the same was duly affixed at the last known address of the Noticee on July 21, 2014 by the Western Regional Office – II (**WRO – II**) of SEBI. Vide email dated July 23, 2014 Anandkumar submitted latest communication address of the Noticee. Accordingly, vide letter dated July 28, 2014 a copy of the SCN was forwarded to the latest communication address of the Noticee through Registered Post – AD. A scanned copy of the SCN was also forwarded to the email id of the Noticee available on record. Vide letter dated July 25, 2014 (received by email on July 30, 2014 and by hard copy on July 31, 2014) the Noticee made the following submissions:

I have received an SCN because of Co- director of ALDERBROOKE PORTFOLIO MANAGEMENT PVT. LTD. known as (APMS) APMS is a private registered company, and I am holding 0.01 % (out of 10000 shares I am holding 1 (one) share.) Anand kumar Kanubhai Ravat is holding remaining share 99.99 % .

Anand kumar K Ravat has been running a company in Junagadh since 2008. Named Alderbrooke Investment. And he used to offer attractive 3 % return to the people, we have done engineering in same college. And again got in touch again in 2009. And I was unemployed at that time and he offered me the job in Alderbrooke Investment. Jagrutiben Kanubhai Ravat (Anand kumar's sister) was the owner of the company. Anand Kumar Ravat is a P. A. holder in that company. I was unemployed at that time so inspite of not knowing anything about share Market, I accepted that job. I didn't know anything about his activity regarding share market, and till date, I am unaware about it. I started my job honestly and whatever the work was given to me, I used to do it with full dignity.

During this time, Anand Kumar K Ravat established a new company named Alderbrooke Portfolio Management Services Pvt. Ltd. In that company, Anand Kumar Ravat had a share of 75 % while His sister Jagrutiben Ravat had a share of 25%. At that time, He made some financial lost in the company and according to the commitment, He repaid the amount to all the investors and earned their respect (trust) so I also invested my savings along with my parents and some relatives too. In 2011, Anand Kumar Ravat launched APMS PVT. LTD. And stopped taking money in Alderbrooke Investment Co. During this time, Except Anand Kumar Ravat no

one (I as well as the other employees of the company) knew about the financial situation of the company. At the time of launching APMS in 2011 I was promoted as a CEO, but this designation was only paper not of company norms.

Anand Kumar Ravat was having all the responsibilities regarding Banks as well as share market who was only the sole signatory. During this time, Anand kumar Ravat had decided to expanse the business in various city of the state. And I was given the responsibilities to open the branches. And I had completed the work in time limit given to me , During this time, I was completely unaware about company's financial and other condition. Even I hadn't know how much balance has the company at that time, He was completely satisfied with my work ability and offered me Director post on 0.01 % in place of Jagrutiben K Ravat in March 2013. Because forming a private limited company. Two (2) directors are necessary. And I consented regarding that because it was a great opportunity for me to jump up my carrier. SEBI sent an order in Dec. 2013 that this company should be wind up. My job as a Co director was till 8 to 9 months. Before I could understand the system , the APMS was banned. And I along with other employee of the company didn't know anything about fund that company had having at that time. I was completely unaware about that the company has lost his entire fund. I was only paying my duty in the company. When I asked about the license at that time, Anand Kumar Ravat replied that SEBI (The Government) has no any license for this kind of company. We all blindly trusted upon him so could not think that if there is no license for such a business, it is called illegal business. When SEBI banned APMS in April 2014, at that time, I realized that I have joined an illegal company. So I felt more guilty myself I have joined the company running again Indian law. Anand Kumar Ravat has done it so smartly that nobody knew that it was against the law. So I have decided to co-operate SEBI and Indian law as much as I can. So I humbly request SEBI to give me clean cheat in all the procedures. In spite of that knowing or unknowing if I have done any wrong I am ready to follow the Indian law. I have all the documents of joining as a co - director and ready to submit whenever it is needed. I am also ready as a witness where ever SEBI needs. In February 2014, I came to know that the company borrowed 30 Cr. From the market and Anand Kumar RAvat said he has only 25 % of the total amount. There are 100 more employees along with me have invested their money with theirs investors too. Our intention was neither losing our capital nor our clients. Till date, we are unknown that with which intention, had Anand Kumar Ravat started this company (APMS). Because he is the founder of the company. He knew everything inspite of that he played gamble with investors' money and lost almost all his money and that isn't digestible easily.

I urge SEBI that if I get personal appointment for hearing from ADJUDICATION OFFICER , I can co-operate more during my personal visit with the officer. If it is possible for SEBI, kindly provide me the time, So I can share more information if u need regarding this .

6. Subsequently, vide Notice of Inquiry dated August 25, 2014 the Noticee was given an opportunity of personal hearing on September 09, 2014. The said Notice dated August 25, 2014 was duly delivered to the Noticee through Registered Post – AD to his last communication address. For abundant caution, a scanned copy of the said Notice dated August 25, 2014 was also forwarded to the Noticee by email. A copy of the said Notice dated August 25, 2014 was also forwarded to the Noticee by Speed

Post – AD which was also duly delivered on August 30, 2014. But the Noticee failed to avail the opportunity of personal hearing.

7. I note that the SCN and the Notice of Inquiry has been duly served to the Noticee in terms of provisions of Rule 7 of the Adjudication Rules. I further note that the Noticee failed to appear for hearing and therefore, the inquiry is proceeded with taking into account the material available on record.

ISSUES FOR CONSIDERATION

8. After perusal of the material available on record, I have the following issues for consideration, viz.,
- A. Whether the Noticee has violated provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PM Regulations?
 - B. Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992?
 - C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PM Regulations?

10. The provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PM Regulations read as under:

Securities and Exchange Board of India 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.

Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993

Regulation 3: Registration as portfolio manager –

No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations.

Provided that a merchant banker acting as a portfolio manager immediately before commencement of the Securities and Exchange Board of India (Portfolio Managers) (Second Amendment) Regulations, 2006 may continue to do so for a period of six months from such commencement or, if he has made an application for registration under these regulations within the said period of six months, till the disposal of such application.

11. From the SCN I note that the Noticee was a director of APMS which was a private limited company incorporated on March 03, 2010 and investors interested in availing its services were made to enter into an MoU, enabling it to manage their funds. The trading activities were carried out either through the trading account of APMS or through the individual account of the client. APMS was also engaged in financial hedging in the stock market. APMS had more than 2000 clients registered with it, comprising of both individual and corporate clients who had invested amounts ranging between ₹10,000 to ₹50,00,000 with it and total assets under management with it as on July 31, 2013 were ₹24.38 Crores (₹19.31 crores from corporate clients and ₹5.07 crores from individual clients). The MoU entered between APMS and its clients had the following clauses:

- First Party, Alderbrooke Portfolio Management Service Private Limited is an institute associated with fund management business.
- Second party is an investor with an intention of investing in Alderbrooke Portfolio Management Service Private Limited's corporate A/C.
- Financial inputs from second party
Rs. ____, by cheque no. ____ dated ____ as a capital investment by cheque.
- For the knowledge of second party, Alderbrooke Portfolio Management Service Private Limited may use the above fund in a separate individual trading A/c of any director of

Alderbrooke Portfolio Management Service Private Limited for trading purpose, in case F&O trading is not enabled with Alderbrooke Portfolio Management Service Private Limited's trading A/c.

○ *Contract Term*

○ **Capital Liability**

First party is liable to return above mentioned capital amount of Rs._____ for the fulfillment of security for above mentioned capital amount, first party gives following cheques [post dated]

○ **Other Liability**

First party is liable to pay other liable amount of Rs._____-/- every month by the virtue of part of other liability as decided between both party understandings. For the fulfillment of above mentioned liabilities of Rs._____-/- first party agrees to transfer Rs. 2000/- on or before 5th date of each month from [Contract Term]

12. Regulation 2 (cb) of PM Regulations define “portfolio manager” as any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the client, as the case may be. From the material available on record it is clear that APMS, pursuant to contract/arrangement (MoU) with its client undertook on behalf of the client the management/administration of the funds of the client. APMS was managing the funds of the investors wherein it undertook to return the capital amount to the clients by giving post-dated cheques. These show that APMS was running portfolio management activities. APMS used the individual trading accounts of its own directors, in case F&O trading was not enabled with APMS's trading account. Further, the very name 'Alderbrooke Portfolio Management Services Private Limited' proclaims that the core activity of APMS was portfolio management. However, the APMS was not having any certificate of registration to act as portfolio manager, thereby acting in violation of provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PM Regulations.

13. I note that the Noticee, being the Director of the Company, was in charge of and was responsible for the conduct of the business of the Company/APMS. I note that in his reply, the Noticee has attempted to put the entire blame on the other director of APMS, i.e., Anandkumar and has stated that he used to blindly trust Anandkumar and whatever work was given to the Noticee, he used to do it with full dignity. However, I am of the considered opinion that the same cannot absolve the Noticee from the

violations committed. From the reply of the Noticee it is clear that he had voluntarily accepted the position of Directorship in the Company and was also working full time for the Company. The Hon'ble Securities Appellate Tribunal (**SAT**) in *Mr. N. Narayanan v SEBI*, Appeal No. 29 of 2012 (decided on October 05, 2012) has, *inter-alia*, observed that –
“.....*With the changing scenario in the corporate world the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto.....*”. The Order passed by Hon'ble SAT is relied upon in this case for guidance. Therefore, I hold that the Noticee as a Director was accountable for the overall functioning of the Company.

14. Section 12 of the SEBI Act, 1992 and Regulation 3 of PM Regulations prohibits a person from acting as portfolio manager without obtaining a certificate of registration from SEBI. The Company, in which the Noticee was a Director, was carrying out activity of portfolio management services without obtaining registration from SEBI. Therefore, I hold that the Noticee has violated provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PM Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992?

15. The provisions of Section 15HB of the SEBI Act, 1992, read as under:

15HB 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 may extend to one crore rupees.*

16. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has held that “*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation*

as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant”.

17. As already observed, the Noticee violated provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PM Regulations. Therefore, I find that the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

18. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the Act, which reads as under:

“15J - Factors to be taken into account by the adjudicating officer
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.”

19. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, the Company, of which the Noticee was a Director, while acting as an unregistered intermediary had collected more than 24 crore rupees from innocuous clients/investors and had put the investors at great risk. I am of the firm opinion that activities of unregistered intermediaries in the securities market seriously compromise the regulatory framework and are definitely detrimental to the interest of investors in securities market. The interest of the investors and orderly development of securities market requires that perpetrators of such activities should be suitably penalized.

20. In view of the aforesaid paragraphs, it is now established that the Noticee violated provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PM Regulations for which I find that imposing a penalty of

□1,00,00,000/- (Rupees One Crore only) on the Noticee would be commensurate with the violation committed.

ORDER

21. Considering the facts and circumstances of the case, in terms of the provisions of SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹1,00,00,000/- (Rupees One Crore only) under Section 15HB of the SEBI Act, 1992 on Jalpeshkumar Amrutlal Makwana.
22. The penalty shall be paid by way of demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Regional Director, Western Regional Office – II, Securities and Exchange Board of India, Unit No: 002, Ground Floor, SAKAR I, Near Gandhigram Railway Station, Opp. Nehru Bridge, Ashram Road, Ahmedabad – 380009.
23. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: September 24, 2014
Place: Mumbai

Jayanta Jash
Adjudicating Officer