

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Section 11 read with Section 11B of the Securities and Exchange Board of India Act, 1992 in the matter of dealings by Mr. Avinash Krishnaji Dixit (PAN: AEXPD8128H), Proprietor, Max Investments and Financial Services with SEBI Registration Nos. INS233470710 (from April 03, 2007 to March 23, 2009 at NSE) and INS013073916 (November 06, 2006 to November 11, 2008 at BSE)

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received several complaints from investors during the period from August, 2008 to September, 2008 against Mr. Avinash Dixit, Proprietor of Max Investments and Financial Services (hereinafter referred to as the '**Noticee**'). The Noticee was a SEBI registered sub-broker of the National Stock Exchange of India Limited ('NSE') having Registration number INS233470710 from April 03, 2007 to March 23, 2009. The Noticee was also a sub-broker of BSE Ltd. (BSE) having SEBI Registration number INS013073916 from November 06, 2006 to November 11, 2008. The Noticee was affiliated to the Stock Broker, India Infoline Limited (hereinafter referred to as '**Stock Broker**'), Member, NSE and BSE.

2. The complaints *inter alia* alleged the following against the Noticee:
 - collected huge amounts from the clients and receipts were issued in the name of Stock Broker,
 - the demand drafts given by the clients were not reflected in the statement of accounts of the respective clients,
 - executed unauthorized trades in the accounts of the clients,
 - failed to provide the contract notes and statement of accounts to the clients despite several requests, etc.

3. The complaints were forwarded to NSE and BSE for necessary action. As the number of complaints were substantial, SEBI had also taken up these complaints directly with Stock Broker of the Noticee for its early redressal.
4. Upon preliminary examination, SEBI observed that the Noticee had accepted cash from the clients, mis-appropriated the funds of the clients, failed to furnish the statement of accounts to the clients, failed to mention the demand drafts given by the clients to the Noticee in their respective statement of accounts, etc. Based on the aforesaid serious irregularities and deficiencies, it was alleged that the Noticee violated Regulation 3, 4(1) and 4(2)(m) and (p) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') and Clause A(1) and A(2) of the Code of Conduct for Sub-brokers specified in Schedule II read with Regulation 15 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as '**Brokers Regulations**') read with Circular No. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003. In view of the above, a Show Cause Notice ('**SCN**') dated December 16, 2010 was issued to the Noticee under section 11, 11(4) & 11(B) of SEBI Act, 1992 to show cause as to why appropriate action should not be taken against him for the aforesaid alleged violations.
5. The SCN issued to the Noticee was returned undelivered by the postal authorities. Subsequently, SEBI vide letter dated January 25, 2011 advised NSE to deliver the SCN through the Stock Broker. NSE vide letter dated April 11, 2011 informed that the Stock Broker vide letter dated April 05, 2011 returned the SCN as they could not deliver the SCN as the Noticee had shifted from the premises. Thereafter, a copy of the SCN was also forwarded to the alternative address of the Noticee obtained from National Securities Depository Limited ('**NSDL**') i.e. "R/o A/2 Narhari Apartments, Karve Road, Erandwana, Pune-411 004, Maharashtra". However, the same could not be served. Thereafter, the SCN was affixed at the office address of the Noticee. Simultaneously, the SCN was also published in the newspaper 'Times of India' on May 16, 2012 advising the Noticee to collect a copy of the SCN from SEBI. SCN was also sent through the Stock Broker to another address obtained from the Noticee's Bank i.e. Flat No. 202, S/N, Shree Nivas Green Land Country, Nehare Gaon, Pune-411041. However, the Stock Broker vide letter dated October 20, 2014 replied that the Noticee was not found in the given address and in none of the flats in the said building.

Hence, they could not serve the SCN by way of affixation at the said address. Despite the multiple efforts through various modes of service of SCN by SEBI including affixation of the SCN at the premises of the Noticee as well as through publication in newspapers, the Noticee has not responded/replied till date.

6. Thereafter, an opportunity of personal hearing was granted to the Noticee on January 14, 2015 before me through a notice of hearing dated December 10, 2014 issued to the Noticee to all the known addresses. However, the said notice was returned undelivered. In view of the same, a newspaper advertisement was issued on December 30, 2014 in 'The Times of India' and 'Maharashtra Times' advising the Noticee to attend the personal hearing in person or through authorized representative on the scheduled date and also to collect copy of notice of personal hearing /SCN from SEBI and furnish reply, if any. Despite the same, the Noticee neither attended the personal hearing nor filed any reply till date.
7. Considering that no communication has been received from the Noticee, despite sufficient opportunities granted to him and also considering the fact that the Noticee failed to avail the opportunity of personal hearing, I am of the view that the Noticee is deliberately avoiding the communications from SEBI and has failed to cooperate with SEBI. In view of the same, I am constrained to proceed on the basis of the documents available on record. I shall now proceed to deal with the charges alleged against the Noticee in the SCN detailed in paragraph 4 above.
8. The relevant legal provisions, the contravention of which have been alleged in the instant case are reproduced hereunder:-

PFUTP Regulations

Regulation 3. Prohibition of certain dealings in securities

"No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under."

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

"(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities."

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

...

(m) an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;

(p) an intermediary predating or otherwise falsifying records such as contract notes."

Brokers Regulations

15. (1) The sub-broker shall –

(b) abide by the Code of Conduct specified in Schedule II;

Code of Conduct for Sub-brokers

"A. GENERAL

(1) INTEGRITY: A sub-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all investment business.

(2) EXERCISE OF DUE SKILL AND CARE: A sub-broker, shall act with due skill, care and diligence in the conduct of all investment business. "

SEBI Circular no. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003

"1.....

2. It is reiterated that brokers and sub-brokers should not accept cash from the client whether against obligations or as margin for purchase of securities and / or give cash against sale of securities to the clients."

Let me now discuss the charges levelled against the Noticee:

I. Acceptance of Cash from clients and issued receipts in favour of its stock broker:

9. It is alleged that the Noticee as a sub-broker accepted cash from the clients and issued receipts in the name of the stock broker with whom it is affiliated.

In this regard I note the following -

9.1 SEBI obtained bank statements from the Cosmos Cooperative Bank Ltd for the period from April, 2006 till January, 2014. The following are observed from the bank statements received from the Cosmos Bank :

- i. An account was opened in the name of Max Investments and Financial Services by the Noticee Mr. Avinash Krishnaji Dixit.
- ii. 255 instances of deposits of cash in the account of Max Investments & Financial Services during the period from November 06, 2006 till June 07, 2008 were observed. The cash deposit amounts ranged from ₹300/- to ₹6,00,000/- amounting to ₹1,32,28,460 (Rupees One Crore Thirty Two Lakh Twenty Eight Thousand Four Hundred Sixty only).

9.2 From the cash receipts enclosed with the investors complaints received by SEBI, it is noted that the Noticee accepted cash from the investors and issued receipts in the name of its stock broker. Copy of one of the receipts is reproduced hereunder for reference:-

<i>CASH / CHEQUE RECEIPT</i>	
<i>Name of the stock broker</i>	
<input type="checkbox"/> <i>Main</i> <input type="checkbox"/> <i>Distribution</i> <input type="checkbox"/> <i>Securities</i> <input type="checkbox"/> <i>Insurance</i>	
<i>Receipt no. 81911</i>	
<i>Date: 21/07/2008</i>	
<i>Received from Mr./Ms. _____ (Name of the investor) a sum of Rs. 5,00,000/- (Rupees Five Lakhs) by Chq / DD/PO No. <u>Cash</u> dated _____ drawn on _____ (Name of the Bank) towards content / SMS/trading margin / delivery margin / settlement pay-in (No. _____) for NSE/BSE supplied to you.</i>	
<i>For Name of the stock broker</i>	
<i>Sd/-</i>	
<i>Authorized Signatory</i>	

9.2.1 In respect of issuance of receipts in the name of Stock Broker, SEBI took up the matter with Stock Broker. In this regard, the Stock Broker submitted the following:

- The receipts of cash payments produced by the investors were not issued by it to the Noticee. The stock broker did not authorize the Noticee to issue the receipts to the clients.
- The serial number of these receipts do not match with its records and the same were unauthorized and forged by the Noticee.
- Actions were initiated against the Noticee such as termination of the Noticees' registration (Issued vide letter dated July 18, 2008), public notice dated July 17, 2008 cautioning about the Noticee, filing of complaints dated August 12, 2008 and September 16, 2008 with Police, Khed, Zilla Ratnagiri and Economic Offences Wing respectively.

9.3 Considering the cash deposits observed from the bank accounts of the Noticee as mentioned at paragraph 9.1, I find that the Noticee accepted cash from its investors. It is noted that as per SEBI Circular no. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 the Noticee, as a sub-broker, should not have accepted cash from the client against obligations or as margin for purchase of securities and / or give cash against sale of securities to the clients. Furthermore, from the copies of cash receipts furnished by the investors/complainants mentioned at paragraph 9.2, I find that the Noticee had also issued receipts in the name of the Stock-Broker. It is also observed that the Noticee failed to reply to the charges of acceptance of cash from investors and the issuance of receipts till date.

In view of the foregoing, I find that the Noticee violated SEBI Circular no. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 read with Clauses A (1) and (2) of Code of Conduct for Sub-Brokers in Schedule II read with Regulation 15 of the Brokers Regulations.

II. Mis-utilization of Demand Drafts received from Clients:

10. Another allegation against the Noticee is that the demand drafts received by him from certain clients were not reflected in the statement of accounts of the respective clients.

In this regard, I note-

10.1. SEBI received various complaints from investors that the Noticee accepted demand drafts from them towards the investments and issued receipts. However, the investors/clients of the Noticee complained that the said demand drafts were not reflected in the clients' Statement of accounts. One of the receipts issued by the Noticee to an investor is reproduced hereunder for reference:

<i>CASH / CHEQUE RECEIPT</i>	
<i>Name of the stock broker</i>	
<input type="checkbox"/> <i>Main</i>	<input type="checkbox"/> <i>Distribution</i>
<input type="checkbox"/> <i>Securities</i>	<input type="checkbox"/> <i>Insurance</i>
<i>Receipt no. 291032</i>	
<i>Date: 03/10/2007</i>	
<i>Received from Mr./Ms. (Name of the investor) a sum of Rs. 2,50,000/- (Rupees two</i>	
<i>Lakh fifty thousand only)) by Cheq/DD/PO No. DD dated 03/07/07 drawn on ICICI bank (Name of</i>	
<i>the Bank) towards content / SMS/trading margin / delivery margin / settlement pay-in (No.) for</i>	
<i>NSE/BSE supplied to you.</i>	
<i>For Name of the stock broker</i>	
<i>Sd/-</i>	
<i>Authorized Signatory</i>	

10.2. As the Notice failed to reply to charges of mis-utilisation of demand drafts received from its investors, SEBI took up the matter with Stock Broker. The stock Broker conducted inspection and spot verifications in the office of the Noticee and found that the credits of the demand drafts of a few clients accounts were made wrongly by the Noticee.

The stock Broker settled the complaints of investors (total 23 complaints) against the Noticee with respect to mis-utilisation of demand drafts. The Stock broker also refunded amounts to the tune of ₹44,61,113/- to the complainants'/investors' whose accounts were wrongly credited by the Noticee.

10.3. It is pertinent to mention here that when a client issues a demand draft to the Noticee, it is the responsibility of the Noticee to enter the details of demand draft and the client in the software provided by the Stock Broker. However, in the present case the Noticee failed to do

so. In view of the foregoing, I find that the Noticee misappropriated the demand drafts given by the investors.

III. Unauthorized trades:

11. SEBI received certain complaints from the clients of Noticee viz., Mr. Dinesh Butala, Mr. Sameer C. Shah, Mr. P.N. Ganesh Kumar and Ms. Sonu Rajaram Naik, who had alleged that unauthorized trades were done by the Noticee in their accounts.

In this regard, I note the following-

- 11.1 As the Noticee failed to furnish any reply to the charges, SEBI took up the matter with the Stock Broker. The Stock Broker admitted that there had been a few cases of unauthorized trades done by the Noticee in various clients' accounts. However, it is stated by the Stock Broker that the clients had received pay-in and pay-out of the funds and securities for such transactions and the contract notes were delivered by the Noticee in physical form besides Email.

In view of the admission of the Stock Broker and in the absence of any reply by the Noticee, I find that the Noticee had executed a few unauthorized trades in its clients accounts and hence, violated Regulations 3, 4(1) and 4(2)(m) and (p) of the PFUTP Regulations.

IV. complaints of non receipt of contract notes:

12. SEBI received complaints alleging that the Noticee failed to provide contract notes and statement of accounts to the clients despite several requests.

In this regard, it is noted that as per Clause B(2) of the Code of Conduct for Stock Brokers in Schedule II read with regulation 7 of the Broker Regulations and the SEBI Circular NO. SMD/SED/CIR/93/23321 dated November 18, 1993, a broker has to issue contract notes for purchase/sale of securities to clients within 24 hours of the execution of the client. A sub broker can only extend administrative assistance in procuring the contract notes from the stock broker and handover the same to the clients. In the light of above provision, I do not find any merit in the aforesaid charge.

13. The Noticee, by indulging in activities such as acceptance of cash from its clients, misutilization of demand drafts of clients and unauthorized trades, etc., has acted in a manner detrimental to the interests of investors. Such acts of the Noticee are in violation of SEBI Circular bearing no. SEBI/MRD/SE/Cir-33/2003/27/08 dated August 27, 2003, Regulations 3, 4(1) and 4(2)(m) and (p) of the SEBI (Prohibition Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Clause A(1) and A(2) of the Code of Conduct for Sub-brokers specified in Schedule II read with Regulation 15 of the SEBI (Stock Brokers and Sub brokers) Regulations, 1992.

14. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon it under the securities laws. It is, therefore, necessary that SEBI exercise these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of any of the participants in the securities market, thereby fulfilling its legal mandate. A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities.

In this case, I find that the Noticee, as a sub- broker, had accepted cash deposits amounting to ₹1.32 crores (approx.) from its investors and issued receipts in violation of SEBI's Circular and Regulations. Similarly, the Noticee misutilised the demand drafts given by its investors and also defrauded the investors by executing unauthorized trades in their accounts. The Noticee has also not responded to the several communications of SEBI. This appears to be deliberate attempt to avoid regulatory intervention. The consequences resulting from violations committed by the Noticee are of very grave nature and are prejudicial to the interests of investors in the securities market. In view of the gravity of the violations perpetrated by the Noticee as brought in the foregoing paragraphs, I am of the opinion that persons such as Mr. Avinash Krishnaji Dixit should never be allowed to have access to the securities market, even more importantly in roles such as sub-broker, etc. in view of the possible danger to the investors.

15. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11B and 11(4) of the Securities and Exchange Board of India Act, 1992, do

hereby restrain Mr. Avinash Dixit [PAN: AEXPD 8128H] proprietor of Max Investments and Financial Services from accessing the capital market and prohibit him from buying, selling or otherwise dealing in the securities market, directly or indirectly for a period of **5 (Five)** years.

16. This order shall come into force with immediate effect.
17. This Order shall be served on all the recognized stock exchanges and the depositories to ensure compliance with above directions.

DATE : DECEMBER 31, 2015
PLACE: MUMBAI

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA