WTM/GM/MIRSD/MIRSD1/13024/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12 (3) of SEBI Act, 1992 read with Regulation 27 of SEBI (Intermediaries) Regulations, 2008 in the matter of JHP Securities Private Ltd.

NOTICEE	SEBI REGISTRATION NO.
JHP Securities Private Ltd.	**INB/F010990036 (BSE)** **INB/F230990039 (NSE)**

BACKGROUND

1. JHP Securities Private Ltd. ('JHP'/ 'Noticee'/ 'Broker') is a stock broker registered with the Securities and Exchange Board of India (SEBI) and is a member of the National Stock Exchange Ltd. (NSE) and BSE Ltd. (BSE). The registered office of the Noticee is *21/28, Gokul Arcade, S N Road, Next to Garware House, Vile Parle (E), Mumbai - 400057.*

2. SEBI conducted an inspection of books of accounts and other records of the Noticee for the period January 01, 2009 to February 2010. However, in few of the cases, the data/information was sought for the period till August 31, 2010. The inspection was conducted by SEBI to look into the investor grievance redressal mechanism of the Noticee and its effectiveness. During inspection, it was observed that the Noticee had violated various provisions of Securities and Exchange Board

of India Act, 1992 (hereinafter referred to as "SEBI Act"), SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "Stock Broker Regulations"), various Circulars issued by SEBI from time to time and Securities Contracts (Regulations) Rules, 1957 (hereinafter referred to as "SCR Rules").

3. Accordingly, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 ("Intermediaries Regulations") and appointed a Designated Authority ("DA") to enquire into whether the alleged violations by the Noticee warranted cancellation or suspension of the certificate of registration granted by SEBI or any other action provided in Chapter V of the Intermediaries Regulations.

4. On completion of the proceedings, the DA submitted a report dated November 30, 2017 (DA's Report) recommending that the Noticee may be prohibited from registering fresh/ new clients for a period of 3 months. Pursuant to this, a post enquiry SCN dated January 10, 2018 was issued to the Noticee, under Regulation 28 (1) of Intermediaries Regulations, 2008 (as it stood at the relevant time), to show cause as to why action, as recommended by the DA or any other action as deemed fit by the Designated Member, should not be taken against the Noticee. A copy of the DA's Report was also forwarded to the Noticee along with an advice to file reply, if any, within 21 days from the date of receipt of the notice. However, though the SCN was delivered to the Noticee, no reply was received. Accordingly, an email dated March 11, 2019 was sent to the compliance officer of the Noticee advising them to file their reply at the earliest. Despite the same, no reply was received from

JHP. In order to proceed in the matter, a personal hearing was scheduled on September 27, 2019 and the same was communicated to the Noticee vide hearing notice dated April 2, 2019. The Noticee filed a reply dated April 4, 2019 stating that it had sought certain documents including a copy of the SCN, and the same had not been received by it. The Noticee requested that the documents be provided to them before the personal hearing. While the documents had already been provided to the Noticee, the same were again provided to the Noticee vide email dated September 13, 2019. Thereafter, a personal hearing was held on September 27, 2019, wherein the Noticee requested copies of relevant documents relied on by SEBI. The documents were provided by SEBI and a personal hearing was again scheduled on October 14, 2019. The scheduled hearing was thereafter adjourned on the request of the Noticee and rescheduled to April 29, 2020, December 9, 2020, January 21, 2021 and April 29, 2021. The Noticee appeared for the hearing on April 29, 2021, represented by its employee, Mr. Bhavesh Shah, and stated that it was not in a position to argue on the merits of the case on account of the Covid-19 pandemic and requested for a date in June 2021. The request of the Noticee was acceded to and the hearing was scheduled for June 23, 2021. However, once again the Noticee sought an adjournment of two weeks. The request of the Noticee was granted, and a last and final opportunity was scheduled on July 8, 2021. On the date of the hearing, the Authorised Representatives (AR) of the Noticee, Mr. R. Kazi and Mr. K. Katariya, Advocates appeared on behalf of the Noticee and made

submissions. The Noticee also filed additional written submission vide letter dated July 19, 2021. The submissions of the Noticee, *inter alia,* are given below:

(i) The Noticee had sought various documents which were not provided by SEBI and as a result of the same it was unable to file a reply in the matter before the DA.

(ii) There has been inordinate delay in issuing the SCN and such delay is fatal to the proceedings.

(iii) The rent for the Himmat Nagar Branch at the rate of Rs.5,000 per month was paid by the Noticee and the same is reflected in the ledger of the Noticee.

(iv) SEBI's inspection in 2005-06 acknowledged the Himmat Nagar Branch as an office of the Noticee.

(v) Mahalaxmi Shares and Securities (MSS) acquired a remisier certificate from BSE on May 3, 2007 and consequent thereto operated as a remisier of JHP from the Himmat Nagar Branch. Hence the allegation that MSS was operating as an unregistered sub-broker is unwarranted and lacks substance.

(vi) Sharing brokerage with a person other than a remisier was permitted by Bye Law no. 22 of BSE.

(vii) The allegation that JHP shared brokerage with MSS is not backed by any material substance and evidence. JHP never paid/ shared any sum amounting to brokerage prior to May 3, 2007.

(viii) The allegation that JHP had allotted terminals at the remisier's office is wrong and misconceived.

(ix) JHP allots trading terminals to approved persons after uploading their details on the portal of the Stock Exchange and so the allegation that JHP allowed people without authorization to operate trading terminals is incorrect.

(x) There is no instance where only two persons out of thirteen persons held NCFM/BCDE certifications. The Noticee was in the process of renewing the certificates. Facts have been misinterpreted and taken out of context.

(xi) The allegation that the names of only two persons were matching with the list of twelve people authorized to operate the trading terminals is because the username may have mismatched with the name of the operator of the trading terminal. The username may have been registered under the authority of JHP by a different certified person and subsequently was used by another certified person.

(xii) JHP employs a robust and efficient risk management system policy and the same was in place since the requirement had arisen under SEBI's Circular dated February 23, 2005. The inspection team concluded on the authenticity of the document only on the ground that it did not bear a date.

(xiii) The SCN states that the risk management policy had observed the misuse of the mini ODIN admin facility, and later it is stated that the policy was ineffective and inefficient. The same is contradictory.

(xiv) The fraud at the Himmat Nagar Branch was committed solely by MSS, and JHP was the party that suffered due to the fraud as its reputation and goodwill took a hit.

(xv) JHP had necessary arrangements to check third party receipts/ payments. The software for the same was in testing phase and therefore had not been implemented on a large scale.

(xvi) With respect to the allegation that JHP had allowed certain clients to trade despite them having high debit balances in their accounts, it is stated that the consolidated credit balance of all the family and related party accounts exceeded the consolidated debit balance. JHP had inadvertently missed out details of other family and related party accounts at the time of inspection.

(xvii) JHP has not submitted misleading information to SEBI. JHP was in compliance of the requirements under various SEBI Circulars. However, due to the large clientele of JHP, the status of compliance with SEBI's Circular dated December 3, 2009 was partly complete at the time of inspection.

(xviii) The list of non-existent client codes is exaggerated and there may be only a few client codes that are non-existent, and the same were due to typographical errors.

(xix) Moreover, during the relevant period, Stock Exchanges permitted stock brokers to change the client codes in the trade transfer post trading session and duly report the same on its online trading system.

(xx) Even if it is hypothetically admitted that 20279 and 8765 instances of trade transfers occurred in 2009-10 and between April 1, 2010 and September 30, 2010, it is a miniscule number compared to the total trades carried out by JHP during the respective period.

(xxi) The alleged dummy codes are actual client codes. Further, no trade transfers were carried out from the account of Pankaj Patel and Prashant Patel in favour of JHP. Rather, all transfers were to family member's accounts. Other transfers are attributable to punching errors.

(xxii) Any lapse in due skill, care and diligence in executing KYC documents was trivial and did not cause any loss or damage which warrants action under the SEBI Act. The lapses were mainly procedural and no complaints were raised by clients.

(xxiii) JHP has initiated necessary preventive measures against the violations and deficiencies observed by the internal auditor.

ISSUES FOR CONSIDERATION

5. I have considered the Report submitted by the DA, the Post-Enquiry SCN issued to the Noticee, written submissions made by the Noticee and other material available on record.

6. The scope of the present proceedings before me is restricted to the enquiry initiated against the Noticee under Chapter V of the Intermediaries Regulations, 2008 to determine whether the following alleged violations by the Noticee warrants

cancellation or suspension of the certificate of registration granted by SEBI or any other action provided under Regulation 27 (as it stood at the relevant time) of the Intermediaries Regulation. The issues are as under:

(i) Whether JHP dealt with MSS prior to its registration as a remisier, and hence dealt with an unregistered entity, thus violating Clause A(1) of the Code of Conduct for Stock Brokers mentioned in Schedule II read with Regulation 7 of Stock Broker Regulations (hereinafter referred to as '**Broker Code of Conduct'**) and Regulation 18B of Stock Broker Regulations, and Section 12 of SEBI Act, 1992 read with SEBI Circular no. SUB-BROK/CIR/02/2001 dated January 15, 2001.

(ii) Whether JHP allotted trading terminals at the remisier's office and submitted incorrect information regarding the persons operating the trading terminal in violation of Clause C (6), A (1), A (2) and A (5) of the Broker Code of Conduct and SEBI Circular No. SMDRP/Policy/CIR-49/ 2001 dated October 22, 2001.

(iii) Whether JHP allowed unauthorized persons to operate trading terminals and submitted false information about the details of approved persons in violation of Clause C (6), A (2) and A (5) of the Broker Code of Conduct and SEBI Circular No. SMDRP/Policy/CIR-49/2001 dated October 22, 2001.

(iv) Whether JHP did not have adequate risk management systems in place and was hence in violation of Clause A (5) of the Broker Code of Conduct and SEBI Circular no. MRD/DoP/ SE/ Cir-07/ 2005 dated February 23, 2005.

(v) Whether JHP did not have a system to track third party receipts and payments in violation of Clause C (6), A (2) and A (5) of the Broker Code of Conduct and SEBI Circular no. SEBI Circular SEBI/ MRD/SE/Cir-33/ 2003/ 27 dated August 27, 2003.

(vi) Whether JHP indulged in multiple trade transfers and did not have a system in place to check the same in violation of Clause A (2) of the Broker Code of Conduct.

(vii) Whether JHP mis-utilized client funds in violation of Clause A (5) of the Broker Code of Conduct and SEBI Circular No: SMD/SED/CIR/93/23321 dated November 18, 1993.

(viii) Whether JHP allowed certain clients to trade despite them having huge debit balances in their accounts and thus violated Clause A (5) of the Broker Code of Conduct and SEBI Circular No. SMD/Policy/Cir-6/97 dated May 7, 1997 read with rule 8 (3) (f) of Securities Contract (Regulations) Rules, 1957 by allowing clients to trade in spite of huge debit balances in their account and funding its clients for trading on the exchanges.

(ix) Whether JHP failed to comply with SEBI's Circular dated December 3, 2009 and submitted misleading information regarding the same, thus also violating Clause C (6), A (2) and A (5) of the Broker Code of Conduct.

(x) Whether JHP failed to exercise due skill, care and diligence while executing KYC documents and thus violated Clause A (2) of the Broker Code of Conduct and SEBI Circular: SEBI/MIRSD/DPS-l/Cir-31/2004 dated August 26, 2004.

(xi) Whether JHP failed to comply with the regulatory requirements and rectify violations/ deficiencies observed by the internal auditor and Hon'ble arbitrators and thus was in violation of Clause A (5) of the Broker Code of Conduct.

(xii) Whether JHP adopted dilatory tactics during the inspection by unduly delaying data submission and was non-cooperative in violation of Regulation 21(1), (2) and (4) of Stock Broker Regulations.

The text of the aforementioned provisions is given below:

Stock Brokers Regulations

Stock Broker not to deal with unregistered Sub-broker

18B.*The stock broker shall not deal with any person as a sub-broker unless such person has been granted certificate of registration by the Board under sub-regulation(1)of Regulation 12*

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.

Stock-Brokers to abide by Code of Conduct.

Regulation 7*. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.*

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*

(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.*

C. STOCK-BROKERS VIS-A-VIS OTHER STOCK-BROKERS

(6) FALSE OR MISLEADING RETURNS*: A stock-broker shall not neglect or fail or refuse to submit the required returns and not make any false or misleading statement on any returns required to be submitted to the Board and the stock exchange.*

SEBI Circular No. SUB-BROK/CIR/02/2001 dated January 15, 2001

"*In this regard, you are advised to inform all the brokers that their sub-brokers are permitted to start business only after clearance and receipt of registration certificate from SEBI.****"***

SEBI Circular No. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001

Grant of trading terminals

"It has further come to the notice of SEBI that the trading terminals granted to the stockbrokers at various locations are being mis-utilised for unregistered sub-broking activities. In view of the above, Exchanges are advised to grant trading terminals only at the members' registered office, branch offices and their registered sub-brokers' offices. Trading terminals granted earlier in places other than mentioned above should be withdrawn immediately. The Stock Exchanges shall amend their bye-laws accordingly to take action against the broker who mis-utilises or lets misutilisation of their trading terminals for unregistered sub-broking activities.

Stock Exchanges are also advised to amend their bye-laws suitably to prohibit their members from dealing with sub-brokers who are not registered with SEBI."

SEBI Circular No: SEBI/MRD/SE/Cir- 33/2003/27 dated August 27, 2003

"*All payments shall be received / made by the brokers from / to the clients strictly by account payee crossed cheques / demand drafts or by way of direct credit into the bank account through EFT, or any other mode allowed by RBI. The brokers shall accept cheques drawn only by the clients and also issue cheques in favour of the clients only, for their transactions.*"

SEBI Circular Nos: SMD/SED/CIR/93/23321 dated November 18, 1993

No money shall be drawn from clients account other than -

(i) money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in

respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;

(ii) such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;

(iii) *money which may by mistake or accident have been paid into such account in contravention of para C above.*

SEBI Circular No. SMD/Policy/Cir-6/97 dated May 7, 1997

Based on the suggestions/representations received from various Stock Exchanges, SEBI has examined the applicability of Rule 8(1) (f) and 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957, relating to Fund Based Activities of Brokers. 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).*

Securities Contract (Regulations) Rules, 1957

Qualifications for membership of a recognised stock exchange.

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,

CONSIDERATION

7. At the outset, I note that the Noticee has contended that there has been a long unexplained delay in the matter. I note that the inspection was carried out in September- October 2010. Subsequent to the inspection, a few additional details were sought from the Noticee. However, the data was either not submitted or submitted with delay by the Noticee. The preliminary findings of the inspection were communicated to the Broker on December 22, 2010. The Broker submitted its reply on February 2, 2011. Subsequently, after analysis of the replies of the Broker *vis-a-vis* the findings of the inspection, enquiry proceedings were initiated, and a DA was appointed in June 2012. The SCN was issued in 2013. Thereafter, the Noticee sought time to file its reply. However, since no reply was received, the Noticee was again advised to submit its reply and a hearing was also scheduled by the DA vide hearing notice dated January 20, 2014. However, the letter was returned undelivered from the address of the Noticee. Thereafter, vide a letter dated March 16, 2015, the Noticee stated that it had received the SCN and sought certain documents which had purportedly not been enclosed with the SCN due to oversight. However, due to administrative exigencies, the matter was transferred to another DA. The new DA supplied the documents requested by the Noticee vide

letter dated May 5, 2017. Thereafter, the Noticee sought an extension till June 9, 2017 to file its reply, which was duly granted by the DA. However, the Noticee again sought an extension vide letter dated June 9, 2017 and undertook not to seek any further extension in the matter. Once again, the request of the Noticee was acceded to. However, the Noticee did not file its reply in the matter, and the DA submitted his report dated November 30, 2017 based on the material available on record. Subsequently, a post-enquiry SCN was issued on January 10, 2018. As noted above, the Noticee did not file its reply to the post enquiry SCN and vide email dated March 11, 2019 a reminder regarding the same was sent to the compliance officer of the Noticee. As noted above in para 4, the Noticee submitted its reply to the post enquiry SCN on June 21, 2021, after several requests for adjournments and extensions. Finally, the personal hearing was held on July 8, 2021, on which day the Noticee appeared. I thus find that the Noticee has been instrumental in delaying the proceedings. Further, the Noticee has not demonstrated in any way what prejudice has been caused to the Noticee in defending itself against the charges levelled against it in the matter, on account of the contended delay.

8. In this regard, reference is drawn to the order of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Pooja Vinay Jain Vs. SEBI* (Date of decision: March 17, 2020) where the appellant challenged the imposition of penalty for the violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. One of the grounds of appeal was that there had been an inordinate delay in initiating the proceedings and, therefore,

on this sole ground the appellant was entitled for exoneration. However, the Hon'ble SAT held that in the absence of any prejudice, the proceedings cannot be quashed simply on grounds of delay. I am of the view that the judgment in the cited matter would apply to the matter at hand. In view of the same, I now proceed to deal with the other issues in the matter.

A. Dealing with unregistered entity.

i. I note that the first allegation against the Noticee is that it was dealing with an unregistered sub-broker i.e. Mahalakshmi Shares and Securities (MSS). MSS was registered with BSE as remisier with effect from May 03, 2007. I note that the Noticee has denied dealing with MSS prior to its registration as a remisier. The Noticee has also stated it never shared any brokerage with MSS, and even if it did, the same was permitted by the BSE bye-laws.

ii. In this regard, I note that in September-October 2008, the Noticee observed the mini admin facility provided by it to MSS was being misused. The fraud at Himmat Nagar involved a high over exposure in respect of a particular set of clients of MSS. Noticee stated that the partners of MSS, in collusion with the officials of the Noticee's Risk Management team had provided false information to its Head Office regarding the receipt of cheques from the clients and the deposit of the cheques in the bank account. The Noticee had given credit limits to the accounts of clients and also provided limits for execution of the transactions on the basis of such false information provided by MSS.

iii. I note that vide letter dated January 20, 2009 to the Economic Offences Wing (EOW), the Noticee, lodged a complaint against MSS regarding the misuse of mini admin facility and tampering of the same by MSS. In the said letter, JHP has stated that MSS approached the Noticee in early 2006. JHP has also stated that MSS had their place of business at A/F-10, Shalibhadra Complex, Near HDFC Bank, Behind Durga Road, Himmat Nagar, Gujarat. The Noticee has stated that since MSS was not registered as a sub-broker, it was facing difficulties carrying out transactions and hence it desired to have business affiliations with JHP. The Noticee in the said letter further states, "*Thereafter, as the formalities for registration as a sub-broker/ remisier would consume considerable time, as an interim arrangement we agreed to provide them with a VSAT facility".* JHP entered into a MoU with MSS regarding the modalities for the same. Similarly, in the "Write up on the fraud that happened in the Himmat Nagar office" provided by JHP to SEBI after the inspection, the Noticee has stated that it was approached by MSS in 2006 having their place of business at A/F-10, Shalibhadra Complex, Near HDFC Bank, Behind Durga Road, Himmat Nagar, Gujarat.

iv. I note that though the Noticee has now stated that it dealt with MSS consequent to its registration as a remisier with BSE on May 3, 2007, from the above documents it is evident that JHP dealt with MSS even prior to its registration. In fact, as seen from its letter to EOW, the very reason JHP was approached was that MSS was not registered as a sub-broker, and registration would take considerable time.

v. From the above, it is clear that JHP had dealt with MSS in some capacity prior to May 03, 2007, *i.e.* prior to its registration as a remisier. As per Regulation 18B of the

Stock Brokers Regulations, a stock broker shall not deal with any person as a sub-broker unless such person has been granted certificate of registration by the Board under sub-regulation (1) of Regulation 12. Further, SEBI, Circular no. SUB-BROK/CIR/02/2001 dated January 15, 2001 provides that stock brokers can permit their sub-brokers to start business only after the receipt of registration certificate from SEBI. Hence, I am of the view that the Noticee has violated SEBI Circular No. SUB-BROK/CIR/02/2001 dated January 15, 2001 and Regulation 18B of the Stock Broker Regulations read with Section 12 of the SEBI Act by dealing with MSS prior to its registration. Thus, the conduct of the Noticee did not meet standards of integrity and fairness required of a stock-broker, and hence I am of the view that the Noticee has also violated the provisions of Clause A(1) of the Code of Conduct for Stock Brokers as mentioned under Schedule II read with Regulation 7 of the Stock Broker Regulations.

B. Operating Terminals outside offices.

i. I note that it has been alleged that the Noticee allotted trading terminals at MSS's office at Himmat Nagar, Gujarat. As per SEBI Circular No. SMDRP/Policy/CIR-49/2001 dated October 22, 2001, brokers are permitted to install trading terminals only at the registered offices of the stock broker, their branch offices and their sub-brokers' registered offices. Further, vide BSE notice No. 104616/2001 dated November 12, 2001 and Notice No. 20040205-13 dated February 05, 2004 it was clarified that "*a remisier is authorized to operate the BOLT at member-brokers' office only. A*

member broker cannot locate his trading terminal at any other location. It is clarified that the trading terminals cannot be installed at the Remisier's office or client's place."

ii. JHP's letter dated January 20, 2009 addressed to EOW and the "Write up on the fraud that happened in the Himmat Nagar office" submitted by the Noticee, stated that in 2006 MSS *"was having their place of business as Himmat Nagar at A/F-10, Shalibhadra Complex, Near HDFC Bank, Behind Durga Road, Himmat Nagar, Gujarat*." Further, JHP had also informed the inspection team of SEBI that Himmat Nagar office was its remisier's office. However, when questioned about the installation of the trading terminals at the remisier office as mentioned above, JHP had changed its stand and submitted that it had a branch office at Himmat Nagar and MSS was functioning as a remisier from the said office.

iii. I note that vide notice No. 104616/2001 dated November 12. 2001 and Notice No. 20040205-13 dated February 05, 2004 BSE has clarified that "*an office is considered as member-brokers' office only if it is rented/owned/licensed by a member-broker of the Exchange and member-brokers should have effective control over the functioning of those offices.*"

iv. In its written submissions and during the personal hearing, the Noticee has stated that the Himmat Nagar was its rented office. The Noticee has also stated that the rent for the Himmat Nagar office at the rate of Rs.5,000 per month was paid by the Noticee and the same is reflected in the ledger of the Noticee. During the personal hearing, the Noticee was asked whether it had any rental agreement in relation to the office. In this regard, the Noticee stated that though the Himmat Nagar office was rented by the Noticee, in small towns at that time, there was often no formal

rental agreement. The ARs of the Noticee were directed to provide some further document in support of their claim that the Himmat Nagar office was rented in the name of the Noticee. However, JHP has not produced any other documentary evidence/ or any other supporting documents to prove the same.

v. JHP has also submitted that SEBI's inspection in 2005-06 acknowledged the Himmat Nagar Branch as an office of the Noticee. I note that the documents submitted by the Noticee in this regard do not indicate any acknowledgment by SEBI that the Himmat Nagar office was its branch. Moreover, the fact that the terminals were allotted at the remisier's office only came to light during the inspection in 2010. The Noticee's own letters state that the address of office of MSS in 2006 as *A/F-10, Shalibhadra Complex, Near HDFC Bank, Behind Durga Road, Himmat Nagar, Gujarat*. In view of the same and in the absence of any other document on record, I am unable to accept the submission of the Noticee that the Himmat Nagar office was its branch, especially when the Noticee itself has stated that the same was the office of MSS in 2006. Therefore, I am convinced that the Noticee had allotted the trading terminals to MSS at Himmat Nagar, Gujarat (remisier's office), and thereby violated the provisions of SEBI Circular No. SMDRP/Policy/CIR-49/2001 dated October 22, 2001.

vi. I also note that the Noticee had wrongly informed the Stock Exchanges that MSS's office at Himmat Nagar, Gujarat is its branch office. Further, JHP also uploaded wrong information to the Stock Exchanges regarding the persons operating the trading terminals at Himmat Nagar Office of MSS and had mentioned that they

were the employees of JHP. I note that upon enquiry of the same by the inspection team, JHP stated that the Himmat Nagar Office is its remisier's office.

vii. Therefore, I am of the view that the Noticee not only allotted trading terminal to remisier's office which was in violation of SEBI Circular No. SMDRP/Policy/CIR-49/2001 dated October 22, 2001 but also submitted misleading/false information to SEBI and the Stock Exchanges in the matter of its remisier's office at Himmat Nagar, Gujarat and also with respect to allotment of terminal in the said office of its remisier. In light of these facts, I conclude that the Noticee has violated the provisions of Clauses C(6), A(1), A(2) and A(5) of the Broker Code of Conduct contained in the Stock Broker Regulations.

C. Trading terminals operated by persons without due/ valid certification.

i. It has been alleged that only 2 persons out of 13 persons operating trading terminals at the registered office of JHP were holding NCFM/BCDE certifications. I note that the trading terminals granted to a stock broker can be operated only by approved personnel. Further, the names of only two persons were matching with the list of 12 persons provided by the Noticee who were operating the trading terminals. I note that the Noticee had undertaken to provide all the records relating to persons operating the trading terminals. However, I find that these details were not provided to the inspection team.

ii. As noted during the inspection, the internal auditor of the Noticee (for the internal audit conducted for the period April 2009 to September 2009 and September 2009

to March 2010) had also observed that the validity of the NCFM certificates of the dealers of Noticee had expired. The Noticee, while forwarding the said report to the Stock Exchanges had stated that the persons whose certificates had expired would be appearing for the exam and had undertaken that such irregularities would not occur in the future. However, the violations regarding unauthorized persons operating the trading terminals of the Noticee were seen during the inspection conducted by SEBI which was almost a year later.

iii. The Noticee, in its written submissions before me has denied that only two persons out of thirteen persons held NCFM/BCDE certifications. However, I note that the Noticee has stated that it was in the process of renewing the certificates, thus admitting that the certification had expired at the time of the inspection. As noted by the Inspection team, the certificates had not been renewed for more than a year.

iv. Further, the Noticee has submitted that the allegation that the names of only two persons were matching with the list of twelve people authorized to operate the trading terminals is because the username may have mismatched with the name of the operator of the trading terminal. The username may have been registered under the authority of JHP by a different certified person and subsequently was used by another certified person. Hence, I note that the Noticee has admitted that the list of persons provided did not match with the registered username. Further, at the time of inspection the Noticee also undertook to ensure that they would take care that the User ID and the person operating it matches and that respective changes would be done.

v. Therefore, I am of the view that by allowing unauthorized persons to operate the trading terminals and by submitting wrong information about the details of its approved persons to the stock exchange, the Noticee has violated the provisions of Clauses C (6), A (2) and A (5) of the Broker Code of Conduct mentioned under Schedule II read with Regulation 7 of the Stock Broker Regulations and SEBI Circular No. SMDRP/Policy/CIR-49/2001 dated October 22, 2001.

D. Absence of proper systems for risk management

i. Risk Management System (RMS)

a. During inspection it was noted that the Noticee did not have adequate systems in place for risk management, prevention of third party receipts and to check multiple trade transfers. I note that SEBI Circular no. MRD/DoP/ SE/ Cir-07/ 2005 dated February 23, 2005 requires every trading member of the exchange to set up a risk management system (hereinafter referred to as '**RMS'**) in line with the abovementioned Circular. During inspection, the Noticee submitted an undated document on RMS Policy. I note that JHP has stated that the mere fact that the document was undated cannot imply that the RMS policy did not exist at the relevant time, and was an afterthought as suggested in the Inspection Report.

b. In this regard, I note that the inspection highlighted that JHP did not have any policy for setting up trading limits, squaring off positions and so on, due to which it was alleged that the Noticee's risk management procedures were weak. I note that the Noticee has not denied the same.

c. Further, I note that JHP has stated that the fraud at the Himmat Nagar office was perpetrated solely by MSS, and upon finding out about the same, JHP lodged a complaint with the EOW. The Noticee has also stated that it suffered great reputational loss on account of the fraud.

d. However, even after the head of the Risk Department of JHP sent emails in September 2007 stating that there was some serious misuse of the mini admin facility by MSS, JHP did not stop its dealing with MSS immediately. The Noticee has contended that the SCN is contradictory, as on the one hand it is stated that there was inadequate RMS whereas on the other hand it is stated that the RMS had noted the misuse of the mini ODIN admin facility. I do not agree with the submission of the Noticee. Risk management systems are not meant to be effective only on paper but also in practice. The Noticee ought to have acted on the alert regarding the misuse, and not having done so, it cannot say that the RMS was robust and efficient. While I agree that there is not adequate material on record in the matter at hand to state that JHP was acting in concert with MSS, I am of the view that the same does show a significant lapse in its risk management systems.

e. Further, even during the inspection which was conducted nearly two years after the fraud at the Himmat Nagar office, it was noticed that JHP did not have any internal controls, monitoring of client behaviour or checks to detect suspicious trading.

f. In view of the above, I agree with the DA that the Noticee has failed to set up a proper risk management system in its operations as a stock broker. Accordingly, the Noticee has violated SEBI Circular no. MRD/DoP/Cir-07/2005 dated February 23, 2005 and Regulation 7 read with Clause A (5) of the Broker Code of Conduct.

ii. Third party receipts/ payments.

a. With respect to systems for checking third party payments/ receipts, I note that during the inspection, the Noticee had submitted to the inspection team that "*At present the company is not having a system of third party check system. Our process for the same is in pipeline and we have purchased a software also for the same for which will go live within a couple of months which will enable us for the third party check system.*" In view of the same, it was alleged that the Noticee did not have a system in place to check third party receipts/payments.

b. JHP has stated that it had necessary arrangements to check third party receipts/ payments. The software for the same was in testing phase and therefore had not been implemented on a large scale. During the course of the personal hearing, the Noticee also submitted that there was no mandate at the relevant time to have automated systems to prevent third party receipts/ payments. The Noticee has also submitted that the SCN does not bring out any specific instance where third party payments/ receipts had occurred.

c. In relation to the same, I note that post inspection the Noticee was asked to submit details of bank name and bank account number from which clients had deposited amounts. In response to the same, the Noticee had stated that the depositor account number is not mentioned at the time of deposit. Thus, it is unclear how the Noticee would check the same.

d. I note that the statement of the Noticee at the time of inspection shows that it did not have adequate systems to check third party receipts/ payments in place, and I agree with the finding of the inspection and DA that the same is a serious lapse considering the fraud that had taken place at Himmat Nagar in 2008. Thus, I am of the view that the Noticee has violated SEBI Circular No: SEBI/MRD/SE/Cir-33/2003/27 dated August 27, 2003. The Noticee also failed to exercise due skill and care and diligence in its operations as a stock broker and to comply with the mandatory statutory requirements prescribed by SEBI. Therefore, the Noticee has violated Clause C(6), A(2) and A(5) of the Broker Code of Conduct read with Regulation 7 of the Stock Broker Regulations.

iii. Trade Transfers

a. Further, during the inspection it was observed that the internal auditor had pointed out multiple instances of trade transfers by the Noticee from one client to another client. On analysis of the data on details of trade transfers by the Noticee from BSE, it was observed there were 20279 instances of trade transfers in FY 2009-10 and

8765 instances of trade transfers during April 1, 2010 to September 30, 2010. In other words, there were around 29000 trade transfers in around 18 months.

b. On further analysis of trade transfer data received from BSE, it was alleged that in total 19080 trades in financial year 2009-10 and 7698 trades during April 1, 2010 to September 30, 2010 were executed in a wrong client code and later on, Noticee had transferred these trades to various other client codes. It was noted that with respect to the trades executed in 3 client codes, *i.e.,* AIK001, AIB059, AIS059 there were major instances of trade transfers (3249, 2826 and 2099 instances respectively) to other client codes by the Noticee. It is alleged that these three client codes were dummy client codes generated by the Noticee and the same were not registered with the Noticee. Inspection also observed multiple instances of transfer of trades from the account of Prashant Patel to own account of the Noticee and vice versa. Similarly, there were many instances of trade transfers from the account of Pankaj Patel also.

c. I note that the Noticees have stated that the annexure to the SCN allege that 19080 client codes were non-existent. With respect to the same, the Noticee has submitted that the list of non-existent client codes is exaggerated and there may be only a few client codes that are non-existent, and the same were due to typographical errors. Moreover, during the relevant period, Stock Exchanges permitted stock brokers to change the client codes in the trade transfer post trading session and duly report the same on its online trading system. Further, even if it is hypothetically admitted that 20279 and 8765 instances of trade transfers occurred in 2009-10 and between

April 1, 2010 and September 30, 2010, it is a miniscule number compared to the total trades carried out by JHP during the respective period. The Noticee has also stated that the alleged dummy codes are actual client codes. Further, it is stated that no trade transfers were carried out from the account of Pankaj Patel and Prashant Patel in favour of JHP. Rather, all transfers were to family member's accounts and other transfers are attributable to punching errors.

d. From the above, I note that the Noticee has not disputed that there were a large number of trade transfers. I note that the submissions of the Noticee offer no explanation for the crux of the issue, i.e., huge number of trade transfers, other than merely stating that they were due to punching errors. Since it is admitted by the Noticee himself that the punching errors continued over an extended period of time, it is evident that the Noticee did not put in place any mechanism or checks to avoid the same.

e. As a registered broker, the Noticee should have exercised greater care to ensure that such frequent errors do not occur and avoided multiple instances of trade transfers. The Noticee has failed to exercise due skill and care in its operations as a stock broker and therefore, I conclude that the Noticee has violated the provisions of Clause A (2) of the Broker Code of Conduct read with Regulation 7 of the Stock Broker Regulations.

E. Allowing Debit Balance Clients to trade.

i. I note that it is alleged that the Noticee had mis-utilized client's funds and allowed certain clients to trade in spite of huge debit balances in their accounts. Analysis of the debit balances carried out by SEBI inspection team for the period April 1, 2009 to March 31, 2010 showed that the Noticee permitted clients who had continuous debit balance for large number of days to trade. Therefore, it was alleged that the Noticee used the credit balances of other clients to fund the trading activity of its clients who had debit balances. During inspection it was also observed that Noticee was not reconciling its client's ledger with its bank accounts on a regular basis.

ii. It was observed from the ageing report as on September 30, 2010, that there was a huge debit balance amounting to Rs. 10,42,77,984.36 for more than 180 days and debit balance of Rs. 1,76,19,121.57 for 91 days to 180 days. I observe that Noticee had submitted to the inspection team that the debit balances were in accounts of group, related parties and family accounts. Further, in some cases the accounts were dormant and company was following up with the clients for the payments.

iii. With respect to the directors of JHP and their family members who had huge debit balances in their account and were allowed to trade, the Noticee submitted that there were also credit balance in the account of other directors and their family account. I note that during the inspection, the figures submitted by the Noticee showed that a credit balance of Rs. 82,14,873.46 was available in related party

accounts for a total debit balance of Rs. 7,31,20,578.50 i.e. only a fraction of the total debit balance.

iv. The Noticee has now stated that certain other related party accounts that had credit balances were unintentionally missed out and actually the net balance of all family and related party accounts for more than 180 days in in excess of the debit balance of the accounts mentioned in the SCN.

v. I note that SEBI's Circular No: SMD/SED/CIR/93/23321 dated November 18, 1993 does not make any exception for funds of related credit balance clients being used to fund trades of related parties who have debit balance. Hence, the argument of the Noticee is without any merit.

vi. The Noticee had also stated during the inspection that it had taken necessary steps to recover the outstanding debit amount due from clients. However, the Noticee did not submit any proof towards the recovery of debit balance from clients. I also note that the internal auditor for the audit period April 2009 to September 2009 and September 2009 to March 2010 had also pointed out about the debit balances outstanding in client accounts for a prolonged period. Despite the same, even during the inspection conducted by SEBI, the debit balances were significant. However, the Noticee kept on submitting wrong/ misleading information to stock exchanges that it was in the process of recovering the debit balances/dues from clients.

vii. Therefore, I am of the view that circumstances point towards JHP using the clients' money to fund the trades of its directors and their families. The Noticee

has violated the directions issued by SEBI in SEBI Circular No: SMD/SED/CIR/93/23321 dated November 18, 1993 in this regard.

viii. Further, I am of the view that, by funding certain clients from the accounts of other clients, the Noticee has engaged itself in fund based activity. The said activity is not exempted under SEBI Circular No. SMD/Policy/Cir-6/97 dated May 7, 1997 as the same is not in connection with or incidental to or consequential upon the securities business. Therefore, I am of the view that the Noticee has violated the provisions of the abovementioned Circular read with rule 8(3)(f) of Securities Contract (Regulations) Rules, 1957.

ix. I am also of the view that the Noticee has failed to comply with the statutory requirements of law and has violated the provisions of Clause A (5) of the Broker Code of Conduct mentioned under Schedule II read with Regulation 7 of the Stock Broker Regulations.

F. Failure to comply with KYC Circulars.

i. In terms of SEBI's Circular: MIRSD/ SE/ CIR-19/ 2009 dated December 3, 2009, the Noticee was required to comply with certain requirements regarding dealings between a client and a stock broker and submit compliance status till June 30, 2010.

ii. I note that the Noticee submitted the status of compliance of the above Circular, details of which are mentioned as under:

Particulars	Compliance Status	If not complied/ partly complied- reasons
Fulfilment of KYC requirement	Partly Complied	We are putting best effort to comply the same and since there was a turnover the same is lacking
Addendum form to existing clients	Partly Complied	
Actual settlement of Running Account	Partly Complied	
Collection of running account authorization form clients	Partly Complied	
Confirmation of email id from clients opting to receive ECN	Partly Complied	
Mandatory document regarding certain policies and procedures	Partly complied	
Delivery of various documents to the clients, framing policy for inactive accounts	Partly complied	

iii. The inspection in the instant case took place in September- October 2010. I find that the Noticee had submitted that it had partly complied with the above Circular. However, it was alleged that the Noticee had not even initiated the process of compliance of the aforesaid Circular. In this regard, I note that the Noticee has refuted the allegation and has submitted copies of a few Addendum Agreements and other compliance documents entered into by JHP. Relying on the same, the

Noticee has stated that it had not submitted incorrect information to authorities, with respect to its compliance with the KYC Circulars. From the above table and documents submitted, I am not in a position to assess the level of compliance achieved by the Noticee as on the date of inspection. However, it is an admitted fact that the Noticee had only partially complied with the requirements laid down as per the above Circular even after 5 months of the deadline prescribed. The internal auditor had also observed the non-compliance with the above said Circular by the Noticee. Despite the issue having been flagged by the Auditor, the Noticee failed to comply with the requirements prescribed in SEBI Circular: MIRSD/ SE/ CIR-19/ 2009 dated December 3, 2009. In view of the same, I am of the opinion that the Noticee has also violated the provisions of Clause A(2) and A(5) of the Broker Code of Conduct read with Regulation 7 of Stock Broker Regulations.

G. Failure to exercise due diligence relating to KYC requirements.

i. The next allegation against the Noticee is that it had failed to exercise due skill, care and diligence while executing the KYC documents. I note that at the time of inspection, JHP had a total client base of 859 active clients. Out of that, a sample of 30 clients KYCs were checked during inspection, and the following discrepancies were noticed:

   a) In-person verification of the clients had not been done for the clients introduced after July, 2008.

b) Brokers JHP and M/s Prashant J Patel had not signed in both segments.

c) Blank voluntary document signed by the client

d) PAN No. has not been verified with original.

e) Franking details have not been done in one segment.

ii. Further, the Noticee did not have a system in place to collect the annual income of the clients. The annual income of clients as stated in KYCs were not captured in the software, which would permit real time alerts on disproportionate turnover/trading in any client's account. Financial soundness and the genuineness of clients was also not verified on a regular basis.

iii. I note that the Noticee has stated that the lapses are trivial in nature and JHP was in the process of complying with the same. JHP has also stated that several non-compliances were only procedural or technical. JHP has also stated that there were no complaints from clients regarding the same.

iv. I am of the view that the non-compliance by the Noticee cannot be excused simply on the grounds that they were technical or venial. The KYC requirements have been put in place to ensure smooth and transparent functioning of the system, and JHP being a registered broker should have ensured proper compliance with the requirements. In light of the same, I am of the view that the Noticee has failed in its duty to exercise due skill, care and diligence, while executing the KYCs. Therefore, I agree with the finding of the DA that the Noticee has violated the provisions of Clause A(2) of the Broker Code of Conduct and SEBI Circular No: SEBI/MIRSD/DPS-l/Cir-31/2004 dated August 26, 2004.

H. Failure to adopt corrective measures

i. It is alleged that the Noticee had not taken any corrective steps regarding the observations of the internal audit report. It is also alleged that the Noticee had failed to take any steps to improve and strengthen their systems based on the comments made by arbitrators.

ii. I note that the Internal Auditor in his report had pointed out certain irregularities / deficiencies / violations pertaining to the stock broker with regard to the period April 1, 2009 to September 30, 2009. The auditor in his report had observed as follows:

a) JHP was not uploading the client funding details to the Stock Exchange on a monthly basis.

b) JHP allowed continuous debit balance in few cases for more than 30 days and allowed clients to trade.

c) JHP was not sending client margin information to the clients.

d) JHP was using clients' bank account towards pay-in obligation /trading of its directors/family accounts.

e) There were multiple instances of allotment of terminal to persons not having appropriate certificates

f) JHP did not have the system of enhanced customer due diligence process for higher risk categories of customers, etc.

iii. The Noticee, while submitting the said audit report to stock exchanges, had stated that it would take corrective steps and improve its systems. However, similar violations/deficiencies were observed in the very next half-yearly audit report for the period October 1, 2009 to March 31, 2010. Hence, it is evident that JHP had not taken corrective steps on the observations pointed out by the internal auditor.

iv. The Noticee again assured that it would take necessary remedial steps to further strengthen their compliance system and avoid such negligence in future. I note that in respect of the same, the Noticee has now stated that it has initiated necessary preventive measures against the violations and deficiencies observed by the internal auditor.

v. Further, the inspection team observed many instances where the arbitrators had made certain serious comments on the operation/functioning of JHP while passing awards. For example, in the case of Shashank Shamrao Latne, the arbitrator had pointed out the loopholes in the functioning of JHP and also pointed out that JHP was submitting false information to Arbitration Committee. Similarly, in the case of Jayeshkumar C Soni, the arbitrator had pointed out that JHP had failed to be present before the arbitration committee with clean hands. In the case of Daljibhai P Patel, the arbitrator pointed out that JHP did not care to issue any notice to the client's request and failed to produce independent evidence towards executed trades to justify its claim. Similar comments were made in other arbitration awards. In respect of the same, the Noticee stated that they

have rectified the deficiencies observed. However, this was not supported by any proof of rectification.

vi. In light of above facts, I note that Noticee had not taken any significant steps regarding the observations pointed out in the internal audit report as the same violations were observed even during the course of SEBI inspection. I therefore find that the Noticee has failed to take any steps to improve and strengthen their systems on the comments made by the Hon'ble arbitrators and also the internal auditors.

vii. I am thus of the view that these inactions on the part of the Noticee clearly indicate a wilful disregard on the part of the Noticee towards compliance with regulatory requirements. In light of the above, I find that Noticee has violated the provisions of Regulation 7 read with Clause A(5) of the Broker Code of Conduct.

I. Non-cooperation in inspection.

i. I note that it is alleged that the Noticee failed to cooperate with the inspection team and delayed submission of data despite several reminders. Therefore, it is alleged that by adopting dilatory tactics during the course of inspection, delaying the data submission and adopting a non-co-operative attitude towards the SEBI inspection, the Noticee has violated the provisions of Regulation 21(1),(2) and (4) of the Stock Broker Regulations.

ii. I find that the inspection team had sought some details before the commencement of inspection, during the period of inspection and also after the inspection. However, despite reminders, the Noticee had on several occasions submitted the information sought with considerable delay, or the data was incomplete or was never provided. I note that, in one particular case, complete data was submitted after a delay of more than 8 months. In fact, the first partial data submission in the said case was made after more than 4 months.

iii. I observe that the same has delayed the inspection process. Therefore, I conclude that, by employing these delaying tactics and adopting a non-cooperative attitude, the Noticee has violated the provisions of Regulation 21(1), (2) and (4) of the Stock Broker Regulations.

CONCLUSION

9. On an overall evaluation of the allegations and the responses, I note that dealing with an unregistered entity, allotting terminals to the remisier's office and allowing unauthorised persons to operate trading terminals are serious violations. The absence of risk management systems and failure to adopt corrective measures even after the deficiencies being pointed out by internal auditor also need to be viewed seriously. By allowing debit balance clients to trade, the Noticee has committed a serious violation of allowing the credit balance of some clients to be used by others. The other violations such as KYC implementation, non-cooperation with SEBI inspection etc. point towards the indifferent attitude of the Noticee with respect to

regulatory compliances. Given the gravity of the violations, I concur with the recommendations of the DA.

ORDER

10. I, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the SEBI (Intermediaries) Regulations, 2008, hereby prohibit the Noticee, *i.e.* JHP Securities Pvt. Ltd. from registering fresh/ new clients for a period of three months from the date of this order.

11. A copy of this Order shall be served on the recognised stock exchanges and on JHP Securities Pvt. Ltd., in accordance with Regulation 30 of the SEBI (Intermediaries) Regulations, 2008.

Place: Mumbai **G. MAHALINGAM**

Date: August 12, 2021 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA