BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 229 /2018-19]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995)

In respect of:
Mr. Babu Joseph
(PAN No. ABIPJ7184P)
(SEBI registration number INS239430312)

In the matter of M/s Inditrade Capital Limited
(formerly known as M/s JRG Securities Ltd)

Facts of the Case:

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted comprehensive inspection of the Stock Broker M/s Inditrade Capital Limited (formerly known as M/s JRG Securities Ltd)(hereinafter referred to as "Indiatrade/stock broker") during March 31, 2015 and April 06-09, 2015. The stock broker is a member of Bombay Stock Exchange, National Stock Exchange of India Ltd (hereinafter referred to as "NSE") and MSEI. During the inspection conducted it was observed that SEBI registered sub broker affiliated to Inditrade, Mr Subair P having SEBI registration number INS239430312 (hereinafter referred to as "Noticee") was allotted Futures and Options terminals (hereinafter referred to as "F&O") in NSE by stock broker without taking Authorized Person registration. It is therefore alleged that Noticee has violated the provisions of

   (a) Clauses 1, 2, 3 and 4 of Annexure 1 of SEBI circulars MIRSD/DR-1/Cir-16/09 dated November 06, 2009 and MIRSD/AP/8/2010 dated July 23, 2010;
   (b) Clause D(c) (iv) of Consolidated NSE Circular 001/2013 dated February 13, 2013;
   (c) Clauses A(1) and D(1) of the Code of Conduct for sub-brokers as stipulated in Schedule II read with Regulation 15 of the SEBI (Stock Broker and Sub Broker) Regulations, 1992 (hereinafter referred to as " Stock Broker Regulations")

Appointment of Adjudicating Officer

2. The undersigned is appointed as the Adjudicating Officer vide comminque order dated July 31, 2018, under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "AO Rules") to inquire and adjudge under Section 15HB of SEBI Act, on the Noticee for the alleged provision of the law.

Show Cause Notice, Reply and Personal Hearing:

3. Show Cause Notice dated August 13, 2018 (hereinafter referred to as 'SCN") was served on Noticee in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against the Noticee for the alleged provisions of law. The SCN issued was duly delivered.

4. Reply by the Noticee:

The Noticee submitted his reply vide letter dated September 2018 which inter-alia states the following:

4.1. Functioning as the sub broker of M/s Inditrade Capital Ltd.

4.2. Not aware that Authorized person trading is required for trading in F&O Segment since I was having sub broker registration.

4.3. The clients with me was interested to trade in F&O Segment, subsequent to getting NISM/NCFM certification, trading was allotted.

4.4. When it was known authorized person is required to operate in F&O segment, the terminal was disabled by the broker/exchange on April 07, 2015 and none of my clients traded in F&O segment till June 22, 2015 till I got the registration as Authorized person as per law with SEBI and Exchange.

4.5. No investor complaints against us alleging about improper dealings with the clients and no dispute with the stock broker.

4.6. There was no intention of violating rules and regulations of the Exchange and SEBI. Was dealing in secondary market duly complying with the rules and regulations from the exchange.

4.7. *Not to charge penalty due to severe competition in the field of business and due to various other reasons such as increasing expenses etc. difficult to survive in this business..*

Personal Hearing:

5. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Noticee on October 17, 2018 granting an opportunity of personal hearing before the undersigned on November 02, 2018.

5.1. On scheduled hearing date on behalf of the Noticee, the Authorized Representative (hereinafter referred to as "AR") appeared before me and reiterated to the submission made pursuant to SCN.

ISSUES FOR CONSIDERATION/FINDINGS:

6. I have carefully perused the reply and submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are:

Issue I: Whether Noticee have violated

a) Clauses 1, 2, 3 and 4 of Annexure 1 of SEBI circulars MIRSD/DR-1/Cir-16/09 dated November 06, 2009 and MIRSD/AP/8/2010 dated July 23, 2010;
(b) Clause D(c) (iv) of NSE Circular 001/2013 dated February 13, 2013
(c) Clauses A(1) and D(1) of the Code of Conduct for sub-brokers as stipulated in Schedule II read with Regulation 15 of the Stock Broker Regulations.

Issue II Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992 on Noticee?

Issue III If so, what should **be the quantum of monetary penalty?**

Issue I: Noticee violation

Violation with respect to Clauses 1, 2, 3 and 4 of Annexure 1 of SEBI circulars MIRSD/DR-1/Cir-16/09 dated November 06, 2009 and MIRSD/AP/8/2010 dated July 23, 2010

7. I note that the SEBI circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 is addressed to the stock exchange *inter-alia states that "Pursuant to the recommendations made by the Secondary Market Advisory Committee of SEBI and discussions with major stock exchange ……to allow SEBI registered stock brokers (including trading members) of stock exchanges to provide access to clients through Authorised Persons. The framework governing the market access through authorized persons is enclosed at Annexure I.*". From the said circular, I note that circular allow SEBI registered stock brokers (including trading members) of stock exchanges to provide access to clients through Authorised persons and has also provided framework to govern the market access through authorized persons.

Contents of Annexure 1 of the aforesaid circular

Clauses 1, 2, 3 and 4 of Annexure -1 of the aforesaid Circular states as under:
*"**1. Who is an "Authorised Person"?***
*Any person - individual, partnership firm, LLP or body corporate – **who is appointed as such by a stock broker (including trading member)** and who provides access to trading platform of a stock exchange as an agent of the stock broker.*
2. Appointment of Authorised Person
***A stock broker may appoint one or more authorised person(s) after obtaining specific prior approval from the stock exchange** concerned for each such person. The approval as well as the appointment shall be for specific segment of the exchange.*

3. Procedure for Appointment

*a) **Stock broker shall select a person** in compliance with the criteria laid down by the Exchange and this framework for appointment as an authorized person and forward the application of the person to stock exchange for approval…*

(b) ----
4. Eligibility Criteria

4.1 An individual is eligible to be appointed as authorised person if he:
a) is a citizen of India;
b) is not less than 18 years of age;
c) has not been convicted of any offence involving fraud or dishonesty;
d) has good reputation and character;
e) has passed at least 10th standard or equivalent examination from an institution recognized by the Government; and
f) has the certification, as applicable to approved user/sales personnel of the respective segment, and undertakes to continue to have valid certification thereafter.

Circular July 23, 2010

"Pursuant to SEBI circular no MIRSD/DR-1/Cir16/09 dated November 06, 2009…….SEBI has received representations from the stock exchanges and market participants seeking review of the certification requirements of authorised persons……In view of the above, the aforesaid circular dated November 06, 2009 has been modified as follows:

(i) sub clause (f) of clause 4.1 of the framework stands deleted.
(ii) new clause 4.4 which reads as under, is inserted:

The approved users and/or sales personnel of authorised persons shall have the necessary certification of the respective segment at all points of time."

7.1. I find from the Annexure-1 to the said Circular that SEBI has explained who is an Authorised person and who is required to appoint such authorized person and procedure to be followed for appointment of such authorised person by the stock broker and the stock exchange. I note from the said circular that it is the stock broker (including trading member) to appoint authorised person with the approval of the stock exchange and also I note that SEBI has laid down the framework to be followed by the stock broker and the stock exchange in respect to an appointment of an authorized person, procedure for appointment and the eligibility criteria for an individual to be appointed as authorised person.

7.2. Further, I note that the SEBI 2009 Circular, inter alia, in Clause 4.1(f) prescribes that "an individual is eligible to be appointed as an Authorised Person if he has the certification, as applicable to approved user/ sales personnel of the respective segment, and undertakes to continue to have valid certification thereafter". However, the SEBI Circular dated July 23, 2010, states that pursuant to the issue of the SEBI 2009 Circular, "SEBI received representations from the stock exchanges and market participants seeking review of the certification requirements for Authorised Persons and accordingly SEBI had decided to rationalize the certification requirements for the Authorised Persons in line with those applicable to the stock brokers and sub-brokers. With this objective in mind, SEBI modified and deleted the Clause 4.1(f) of the SEBI 2009 Circular and inserted an additional Clause 4.4 stating that the approved users and/or sales personnel of Authorised Persons shall have the necessary certification of the respective segments at all points of time". In light of the aforesaid circular, I find from the record that Noticee had valid certification.

7.3. From the above, I note that liability of appointment and procedure to be followed for appointment as an authorised person is not on the sub broker. Further, the Noticee had valid certification in the respective segment. Hence, the allegation that Noticee has violated SEBI

circular MIRSD/DR-1/Cir-16/09 dated November 06, 2009 and July 23, 2010 do not stand established.

(c) **Violation in respect to Clause D(c) (iv) of Consolidated NSE Circular 001/2013 dated February 13, 2013:**

7.4. I note that the above Circular is addressed to members of NSE *inter alia* states " *Copy of registration certificate issued by SEBI to the sub broker or letter of approval issued by the exchange for an Authorised person is displayed at the dealing office of the sub broker/authorised person. It should be visible to everybody and placed in the reception area of the dealing office".* I find that the said circular is addressed to the Members/stock brokers of the stock exchange. The sub brokers are affiliated to the stock brokers. In the said circular, it is noted that the sub broker or the authorised person is required to display the registration certificate or letter of approval issued by the exchange. In the instant case, the Noticee had the SEBI registration certificate to act as sub broker in Equity and Cash segment but to act as authorised person in F&O segment, he requires the approval of the exchange by his affiliated stock broker, which the Noticee did not have the requisite approval of authorised person during the relevant period. I note that after it was brought to the notice by the SEBI Inspection team, the F&O terminal of the Noticee was deactivated on April 07, 2015 and subsequently the Noticee was granted approval of registration as Authorised Person on June 08, 2015 and allotment of F&O terminal on June 22, 2015. Therefore, the allegation that the Noticee has violated provision Clause D(c) (iv) of Consolidated NSE Circular 001/2013 dated February 13, 2013 stands established.

8. Violation with respect to Clauses A(1) and D(1) of the Code of Conduct for sub-brokers as stipulated in Schedule II read with Regulation 15 of the Stock Broker Regulations.

Stock Broker Regulations CODE OF CONDUCT FOR SUB-BROKERS [Regulation 15]

A. General

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

D. Sub-Brokers vis-a-vis Regulatory Authorities

(1) General Conduct: A sub-broker shall not indulge in dishonourable, disgraceful or disorderly or improper conduct on the stock exchange nor shall he wilfully obstruct the business of the stock exchange. He shall comply with the rules, bye-laws and regulations of the stock exchange.

8.1. I find from the records available before me that the Noticee was paid commission by his stock broker for the trades done in F&O terminal of the stock broker without having the approval to act as authorised person. I find from the circular though it was the responsibility of the stock broker to obtain the approval from the stock exchange but the Noticee is also expected to be well aware of the statutory requirements. I note that it is the responsibility of the Notiicee to conduct his business with fairness and in orderly manner. Therefore, the allegation for violation of Clauses A(1) and D(1) of the Code of Conduct for sub-brokers as stipulated in Schedule II read with Regulation 15 of the Stock Broker Regulations stands established against Noticee.

Penalty for contravention where no separate penalty has been provided.

9. The provision of section 15HB is reproduced below:-

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

10. However, as noted above in my findings, Noticee had traded in F&O terminal without approval of authorised person, subsequent to inspection, I find from the records that the trading terminal in F& O segment was terminated and the Noticee had obtained authorised person registration and F&O terminal after it was brought to the notice. I also note that there were no investor complaint against the Noticee from the clients he dealt with in F&O Segment.

11. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in Appeal No. 109 of 2011 in UPSE Securities Ltd Vs SEBI vide order dated July 25, 2011 held that *"…before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity/ deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity…"*

12. Further, Hon'ble SAT, in Appeal No. 153 of 2012 in DSE Financial Services Ltd. v SEBI in its order dated September 11, 2012 held that *"…every minor discrepancy/ irregularity found during the course of inspection is not culpable and object of the inspection could well be achieved by pointing out the irregularities/ deficiencies to the intermediary at the time of inspection and making it complaint."*

13. While determining the quantum of penalty under section15HB, it is important to consider the factors stipulated in section 15J of SEBI 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."

Explanation: *For removal of doubts, it is clarified that the power to of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section*

14. From the material available on record, no monetary loss to the investors as a result of the Noticee's failure is reported. From the documents available on record, it is noted that no prior default is on record against the Noticee.

15. I have considered that there were no investor grievances on record before me against the Noticee who had executed trades of his clients in F&O segment through the stock broker. Further the observations made in the inspection report are procedural in nature and all of these are complied with after being pointed out by the inspection team. However, considering the fact that the Noticee has traded on behalf of his clients in the F&O terminal of stock broker without approval of Authorised Person, the matter does not deserve complete leniency as no penalty case.

ORDER

16. In view of the above and after considering the factors under Section 15J of the SEBI Act, in exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the Noticee under Section 15HB of the SEBI Act, 1992 for the violation of Clause D(c) (iv) of Consolidated NSE Circular 001/2013 dated February 13, 2013 and Clauses A(1) and D(1) of the Code of Conduct for sub-brokers as stipulated in Schedule II read with Regulation 15 of the Stock Broker Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

17. The Noticee mentioned above shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

18. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manger (Enforcement Department - DRA- II) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	

Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (Penalty)	
Bank Name and Account Number from which payment is remitted	
UTR No	

19. In terms of Rule 6 of the Rules, copy of this order is sent to Noticee and also to the Securities and Exchange Board of India.

Date: January 18, 2019
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER