WTM/GM/SRO/SRO/12456/2021–22

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

FINAL ORDER

UNDER SECTION 19 READ WITH SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 READ WITH REGULATION 35 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992.

IN THE MATTER OF –

NOTICEE	SEBI REGISTRATION NO.
M/S BASAN FINANCIAL SERVICES LIMITED	INM000011989

BACKGROUND:

1.1 M/s Basan Financial Services Limited ("**Noticee**") is a Company incorporated under the provisions of the Companies Act, 1956 ("**Companies Act**") on November 1, 2010. The Noticee is registered as a Merchant Banker having Securities and Exchange Board of India ("**SEBI**") Registration no. INM000011989.

1.2 Pursuant to an Order dated November 6, 2015, SEBI had conducted an Inspection of the Noticee on March 24, 2016, in view of certain complaints relating to non–disclosures, mis–statements in the offer documents of SME public issues including of Subh Tex Limited ("**Subh Tex**"). Pursuant to the aforementioned Inspection, the observations made against the Noticee in the Inspection Report dated March 31, 2016, were as under:

i. The Noticee did not have adequate manpower to effectively discharge the activities or duties of a Merchant Banker.

ii. The requisite documents/information pertaining to the SME Issue of Subh Tex were not part of due diligence file.

iii. The Noticee did not provide requisite documents/information and also did not provide necessary assistance to the SEBI Inspection team.

iv. The Noticee did not have an appropriate level of knowledge and competence to carry out the activities of a Merchant Banker.

1.3 The findings of the aforementioned Inspection were communicated to the Noticee vide SEBI letter dated April 1, 2016. In reply, the Noticee vide a letter dated April 16, 2016, had informed SEBI that as it had requested for surrender of its Certificate of registration vide a letter dated March 31, 2016 (received at SEBI on April 11, 2016), the proceedings related to the Inspection be closed.

1.4 Subsequently, SEBI initiated enquiry proceedings against the Noticee in terms of the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") and vide an Order dated May 31, 2019, under Section 19 of the SEBI Act, 1992 ("**SEBI Act**") read with Regulation 24(1) of the Intermediaries Regulations, had appointed a Designated Authority ("**DA**") to enquire into the following violations of the SEBI (Merchant Bankers) Regulations, 1992 ("**Merchant Bankers Regulations**") as alleged against the Noticee and to submit the Report with recommendations in terms of the Intermediaries Regulations, accordingly:

TABLE I – PROVISIONS OF LAW ALLEGED TO HAVE BEEN VIOLATED BY THE NOTICEE		
SR. NO.	**DETAILS**	**MERCHANT BANKERS REGULATIONS**
1.	The Noticee did not have adequate office space, equipment and manpower to effectively discharge the activities or duties of a Merchant Banker.	**Regulations 6(aa) and 6(b)**. ***Consideration of application.*** *6. The Board shall take into account for considering the grant of a certificate, all matters which are relevant to the activities relating to merchant banker and in particular the applicant complies with the following requirements, namely:* *(aa) the applicant has the necessary infrastructure like adequate office space, equipment, and manpower to effectively discharge his activities;* *(b) the applicant has in his employment minimum of two persons who have the experience to conduct the business of merchant banker;*
2.	The requisite documents / information pertaining to the SME Issue of Subh Tex were not part of due diligence file provided by the Noticee.	**Regulations 14(1)(e) and 16**. ***Maintenance of books of account, records etc.*** *14. (1) Every merchant banker shall keep and maintain the following books of account, records and documents, namely:* *(e) Records and documents pertaining to due diligence exercised in pre-issue and post – issue activities of issue management and in case of takeover, buyback and delisting of securities.* ***Maintenance of books of account, records and other documents.*** *16. The merchant banker shall preserve the books of account and other records and documents maintained under regulation 14 for a minimum period of five years.*
3.	The Noticee had not provided requisite documents / information and had also not provided	**Regulations 31(1), (2) and (4) and Clause 3 of Code of conduct prescribed in Schedule III for Merchant Bankers under Regulation 13**. ***Obligations of merchant banker on inspection by the Board.***

	necessary assistance to the SEBI Inspection team.	*31.(1) It shall be the duty of every director, proprietor, partner, officer and employee of the merchant banker, 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 his activities as a merchant banker within such time as the inspecting authority may require.* *(2) The merchant banker shall allow the inspecting authority to have reasonable access to the premises occupied by such merchant banker 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 merchant banker or any such other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority, are relevant for the purposes of the inspection. …* *(4) It shall be the duty of every director, proprietor, partner, officer or employee of the merchant banker to give to the inspecting authority all assistance in connection with inspection which the merchant banker may reasonably be expected to give.* ***Code of Conduct for Merchant Bankers.*** *3. A merchant banker shall fulfil its obligations in a prompt, ethical, and professional manner.*
4.	The Noticee did not have appropriate level of knowledge and competence to carry out the activities of a Merchant Banker.	**Clauses 21 and 29 of Code of conduct prescribed in Schedule III for Merchant Bankers under Regulation 13**. *21. A merchant banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, Regulations made thereunder, Circulars and Guidelines, which may be applicable and relevant to the activities carried on by it. The merchant banker shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.* *29. A merchant banker shall ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it in the conduct of its business, in respect of dealings in securities market.*

ENQUIRY BY THE DESIGNATED AUTHORITY:

1.5 A Show Cause Notice dated June 4, 2019 ("**Enquiry SCN**"), was issued to the Noticee under Regulation 25(1) of the Intermediaries Regulations. The Noticee was called upon to show cause as to why appropriate recommendations for the alleged violations should not be made against it, by the DA, in terms of the Intermediaries Regulations. The Noticee was also advised to submit its reply along with documentary evidence(s), if any, within 21 days from the date of receipt of the Enquiry SCN. The Noticee replied to the SCN vide a letter dated June 21, 2019.

1.6 Thereafter, upon completion of the enquiry, an Enquiry Report dated July 11, 2019 ("**Enquiry Report**") was submitted by the DA to the Designated Member. In the Enquiry Report, the DA had *inter alia* noted that at the relevant time, the Noticee and its Promoter/Director and Compliance Officer, had violated the provisions of the Merchant Bankers Regulations as indicated at Table I.

1.7 In accordance with the Intermediaries Regulations, the DA recommended as under:

a. Suspension of the Certificate of Registration of the Noticee as a Merchant Banker for a period of six months.

b. Debarring Basanth Kumar Agarwal, Promoter and Director of the Noticee ("**Basanth Agarwal**"), from being employed or associated with any registered intermediary or other registered person for the period to be specified in the Order (to be passed by the Designated Member).

c. Debarring Nikhil Agarwal, Compliance Officer of the Noticee, from being employed or associated with any registered intermediary or other registered person for the period to be specified in the Order (to be passed by the Designated Member).

POST–ENQUIRY PROCEEDINGS BY THE DESIGNATED MEMBER ("DM"):

2.1 A post–enquiry Show Cause Notice dated August 6, 2019 ("**SCN**"), was issued to the Noticee enclosing a copy of the Enquiry Report submitted by the DA and calling upon it to show cause in terms of Regulation 28(1) of the Intermediaries Regulations as to why action as recommended by the DA should not be imposed against the Noticee in terms of the said Regulations, as deemed fit by the DM. The Noticee replied to the SCN vide a letter dated August 22, 2019.

2.2 Subsequent to the issuance of SCN, an opportunity of personal hearing was granted to the Noticee on **April 20, 2020**, which was adjourned at the Noticee's request. Thereafter, an opportunity of hearing was granted to the Noticee on **February 16, 2021.** The Noticee appeared for the hearing through its Director, Basanth Agarwal. The Noticee reiterated the submissions contained in its reply dated August 22, 2019. The Noticee was granted one weeks' time to file additional written submissions, which it did so vide a letter dated February 20, 2021. Accordingly, the hearing stood concluded against the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS:

3.1 I have considered the material available on record i.e. Enquiry Report along with the SCN, Noticee's replies dated August 22, 2019 and February 20, 2021.

3.2 In its replies, the Noticee had submitted as under:

A. *"The Noticee, a sister concern of stock broker, Basan Equity Broking Limited ("**BEBL**"), was admitted as a Merchant Banker in July 2012. Since BEBL was already carrying out stock broking activities and serving to clients in financial sector, it was decided to offer services of Merchant banker to existing as well as new clients. Hence, Merchant Banking Licence was obtained by the Noticee. However, subsequent to obtaining the registration, the Noticee could not get any Merchant Banking business from Hyderabad and as such it was decided to appoint two more members in Mumbai to get Merchant Banking business for the Noticee. In 2013, the Noticee had a five–member team to carry out the Merchant Banking activities which comprised of:*

   i. *Basanth Agarwal (Director) based out of Hyderabad;*
   ii. *Tripti Agarwal (Director) – Hyderabad;*
   iii. *Jignesh Mehta (Senior, Manager Merchant Banking operations) – Mumbai;*
   iv. *V. R. Amit Kumar (Manager, Merchant Banking operations) – Mumbai;*
   v. *Nikhil Agarwal (Compliance Officer) – Hyderabad.*

B. *The public issue of Subh Tex Limited under the BSE–SME category was the first assignment obtained by the Noticee in 2013 for performing due diligence as part of the initial public offer ("**IPO**"). All the work with respect to the due diligence was carried out from Mumbai. Basanth Agarwal had personally visited Mumbai around 4 times during the process to oversee the work being carried out. The due diligence process was completed and accordingly, a report was issued. All the important and relevant files for due diligence were kept in Mumbai office itself. Further for the next two years, the team in Mumbai could not get any business with respect to merchant banking and there were issues with respect to non–performance by Mumbai team. Thereafter, in the middle of these conflicts with management, both Jignesh Mehta and Amit Kumar stopped responding to the Noticee's calls from September 2015 onwards and the Noticee was unable to communicate with them. It is pertinent to note that*

even when the two employees were absconding, the Noticee still had three employees to look after the merchant banking business.

C. *As we were trying to locate both ex–employees, we received notices from SEBI for the purpose of Inspection in March 2016. On the day of Inspection, Basanth Agarwal and Nikhil Agarwal met the SEBI officials and admitted the same fact that Jignesh Mehta, an ex–employee of the Noticee, was absconding and on that day, the required documents were not available to be produced before the SEBI officials as the same were still with him. There was a miscommunication because of which SEBI officials perceived that the documents were not available all together and declaration was taken from the Director to that effect. Later around January 2017, we were able to trace the employees and recover all the data which was in their possession and were transferred back to Hyderabad Office.*

D. *With respect to non–maintenance and preservation of Books of accounts we respectfully reiterate that since the concerned person left the organization along with data, we could not provide the books and records to Inspection team. Upon receiving the letter for Inspection we tried to communicate with the concerned persons for the data but they were untraceable. We admit that these facts were not shared with the Inspection team as we were continuously trying to trace the persons and were hopeful to get the data in short time. Also, due to certain concerns with respect to reputation of the organization, the events were not disclosed to the Inspection team. After all the failed efforts the promoter met the Inspection team at 5.3OPM. We humbly admit to the fact that we could not provide the required assistance to the Inspection team in our office. We could have definitely managed the situation in a better way and we provide our unconditional apology for our shortcomings. We request you to consider the prevalent circumstances during that time and not consider as deliberate procrastination.*

E. *Being a SEBI intermediary, we understand the responsibilities bestowed upon us and we strive to comply with all the rules and regulations applicable to us. As stated earlier, Subh Tex was the first project managed by* ***us*** *as Merchant Banker and we had adequate resources to execute the task. The persons were employed after a proper due diligence having sufficient background of dealing in securities market. Unfortunately due to certain situations beyond our control the employees went absconding and stole few files from our office premises, which were however recovered in short time. Further, as precautionary measure, we did not*

undertake any business until previous queries were resolved. Proof of not taking any MB activities can be seen through our filed IT Return/Balance Sheet

F. *The Noticee was issued a Certificate of registration for 5 years from June 13, 2012 to June 12, 2017. Subsequently, the Noticee was allowed permanent registration from June 12, 2017 onwards pursuant to a Notification dated December 8, 2016 for SEBI (Changes in Condition of Registration of Certain Intermediaries) (Amendment) Regulations, 2016. However, since the Noticee could not get any business for Merchant banking it was decided to surrender the Merchant Banking Licence and accordingly, original registration certificate was submitted to SEBI office along with manual form of surrender in January 2018. Due to some technical issue in submitting online surrender form, the surrender process could not get completed and the status was still active. In the meantime, it was brought to the Noticee's notice that since the Noticee has already been granted permanent registration w.e.f June 12, 2017, the Noticee was bound to pay the renewal fees of ₹9 Lakh irrespective of whether the Merchant Banking Licence would be surrendered or be continued with. Considering the amount involved and as there was no option with the Noticee, it was decided to pay the fees in February 2019 and also to apply for renewal to continue with Merchant Banking activity. For this purpose, the Noticee hired more qualified staff to take forward the Merchant Banking business. However, owing to the Subh Tex Limited issue, the Noticee voluntarily decided to surrender the Membership and filed the online application in May 2020.*

G. *The Noticee had not carried out any Merchant Banking activity during the last 8 years and as such the Noticee has voluntarily surrendered the merchant (banking) Licence in May 2020, which itself is irreparable loss to the Noticee's profile. Lastly, Basanth Agarwal is the Promoter and Managing Director of BEBL which is a registered stock broker and carries on the primary business activity. BEBL is also the main source of revenue. BEBL has more than 10,000+ registered clients and 100+ employees. BEBL has always been compliant with all regulators since beginning of its operations in 2008 and therefore, debarring Basanth Agarwal could lead to collapse of BEBL which provides bread and butter to 100+ employees and also could result in loss to the 10000+ registered clients/investors.*

H. *Considering the above, we pray not to debar Basanth Agarwal and Nikhil Agarwal from being employed or associated with any registered intermediary or other registered person, since the Noticee has already surrendered the Merchant banking license."*

3.3 At the outset, it is noted from the material available on record that:

a. The SME Issue of Subh Tex had opened on September 30, 2013 and had closed on October 7, 2013. The complaints relating to the aforesaid Issue were received in SEBI on August 7, 2013, November 5, 2013, February 18, 2015 and April 24, 2015. SEBI had ordered a special purpose Inspection of the Noticee on November 6, 2015, on account of several complaints received regarding non–disclosure or inadequate disclosures and mis–statements in the Offer document of Subh Tex's SME Issue.

b. Prior to the Inspection, SEBI had vide a letter dated November 12, 2015, sent a Notice to the Noticee seeking its response to the pre–Inspection questionnaire, which information was furnished by the Noticee to SEBI on November 26, 2015, only after a reminder e–mail dated November 24, 2015.

c. Vide an e–mail dated March 22, 2016, SEBI had informed the Noticee that the Inspection will commence on March 24, 2016 and had advised it to keep the due diligence and compliance files relating to the SME Issue of Subh Tex ready for Inspection on that date. In addition, a telephonic call was also made by SEBI at the Noticee's office, which was answered by its Compliance Officer, Nikhil Agarwal, informing him of the Inspection.

d. On the date of Inspection, the SEBI Inspection team had noted that neither the Compliance Officer nor any other authorized official of the Noticee was present to extend cooperation to the Inspection team. On the contrary, the Inspection team had found only one employee of the Noticee present at its office. On the instructions of the Inspection team, the employee had informed Nikhil Agarwal of the Inspection, who in turn stated that he was not in a position to attend office on account of fever. However, on being made aware by the Inspection team that such non–compliance would be viewed seriously by SEBI, Nikhil Agarwal came on the phone and instructed the employee to furnish due diligence files/documents relating to SME Issue of Subh Tex to the Inspection team. However, upon verification, the Inspection team had found that the relevant documents/information including the complaints received by the Noticee against the Issuer and the response provided by the Noticee to BSE in respect of the same, were not part of the information/documents provided by the Noticee on the date of Inspection.

e. In the evening, at around 5:30pm, the Promoter and Director of the Noticee, Basanth Agarwal along with Nikhil Agarwal, reached the Noticee's office and met the Inspection team. Further, Basanth Agarwal made the following submissions in response to the queries raised by the Inspection team:

i. The Director and Compliance Officer did not have the requisite documents at the Noticee's office and needed to obtain the same from the Issuer/Subh Tex.

ii. No personnel were employed at the Noticee's office for carrying on merchant banking functions.

iii. Subh Tex was the only Issue handled by the Noticee through one of its employees, Jignesh Mehta, and as he had left the Noticee's employment, no data could be retrieved.

iv. The Noticee did not have any experienced and qualified personnel to handle the merchant banking activities.

v. The Noticee had utilized the office premises of *BEBL* for its merchant banking activities.

f. As the information provided by the Noticee did not contain any relevant documents pertaining to due diligence regarding the SME Issue of Subh Tex, a letter was handed by the Inspection team to Basanth Agarwal on March 24, 2016, wherein it was recorded that none of the information/documents were provided by the Noticee to SEBI. The letter had also listed out all the essential documents to be provided by the Noticee to SEBI, which could assist in indicating that the Noticee had exercised independent verification and due diligence while lead managing the SME Issue of Subh Tex. While recording the acknowledgement for receipt of the aforementioned letter, the Noticee had confirmed (through a letter of the same date) that all information/documents had to be obtained only from the Issuer.

g. Pursuant to the Inspection on March 24, 2016, Basanth Agarwal and Nikhil Agarwal were advised to appear at the SEBI Hyderabad Local Office ("**SEBI HLO**") on March 28, 2016 at 11 am. However, neither of them had appeared at the aforementioned SEBI Office on the said date.

h. Thereafter, on March 30, 2016, Basanth Agarwal visited the SEBI HLO and submitted that as the Noticee did not have any documents pertaining to the complaints received against Subh Tex and its SME Issue, he was not in a position to provide any information/documents to SEBI. Basanth Agarwal was advised by SEBI to provide a written statement of the Noticee's inability to provide the relevant information/documents to SEBI, if it so desired. Accordingly, in response, Basanth Agarwal had provided a written statement to SEBI *inter alia* stating:

i. *"I (Basanth Agarwal) admit that we did not furnish the requisite information/data as sought by SEBI vide an Inspection Notice dated November 12, 2015, within the stipulated time and also in the manner specified. The said information was only furnished after a reminder was issued to the Noticee and the reply was not complete in all aspects in as much as we did not furnish any information on the details of complaints received against the SME Issue of Subh Tex.*

ii. *I admit that neither the Compliance Officer nor any of the key personnel was available for furnishing of documents to the Inspection team on March 24, 2016. I had come to meet the Inspection team only at around 5:30pm for interaction.*

iii. *As on date, we admit that we do not have any of the documents pertaining to the complaints received against Subh Tex and its SME Issue. Therefore, we are unable to furnish any of the documents sought by the Inspection team on March 24, 2016 as listed out in their letter dated March 24, 2016.*

iv. *The SME Issue was lead managed by us through one of our employees, Jignesh Mehta, who had introduced Subh Tex to us for the purpose of SME Issue. …*

v. *As on date, we do not have any experienced and qualified personnel to handle the merchant banking activities for us. We have since realised our incompetency in*

acting as a Merchant Banker and we are actively considering for surrendering our Certificate of registration shortly…"

3.4 As noted from the preceding paragraphs, the scope and focus of the Inspection was to ascertain whether the Noticee had observed due diligence required from it in respect of the SME Issue of Subh Tex and whether the disclosures made in the Offer Document were adequate. However, due to the non–cooperation and failure by the Noticee to provide necessary information/documents at the relevant period, the purpose of the Inspection could not be achieved. It is observed that Basanth Agarwal was in charge of the entire business of the Noticee during the handling of the SME Issue of Subh Tex. Further, during the Inspection by SEBI, Basanth Agarwal was the Promoter and Director of the Noticee while Nikhil Aggarwal was its Compliance Officer. The facts and circumstances as brought out above from the Inspection Report are also admitted by the Noticee.

VIOLATION OF REGULATIONS 6 (aa) AND (b) OF THE MERCHANT BANKERS REGULATIONS:

3.5 As per Regulations 6(aa) and 6(b) of the Merchant Bankers Regulations, for considering grant of Certificate of registration, SEBI shall take into account compliance by the applicant with the requirement for necessary infrastructure such as manpower to effectively discharge its activities and also the employment of a minimum of two persons who have experience to conduct the business of merchant banker. In its replies, the Noticee has admitted that at the relevant time, it did not have adequate manpower to discharge its Merchant Banking activities and that it did not have in its employment, a minimum of two persons having experience to conduct merchant banking business. In view of the aforementioned, I find that the Noticee had contravened the eligibility criteria and the conditions for grant of or holding the Certificate of registration as merchant banker as stipulated in terms of Regulation 6(aa) and 6(b) of the Merchant Bankers Regulations.

VIOLATION OF REGULATION 14 (e) READ WITH REGULATION 16 OF THE MERCHANT BANKERS REGULATIONS:

3.6 In terms of Regulations 14(e) read with Regulation 16 of the Merchant Bankers Regulations, a Merchant Banker shall maintain the records and documents pertaining to due diligence exercised in pre and post–issue activities of issue management and shall preserve the books of account and other records and documents maintained under Regulation 14 for a minimum period of five

years. In the instant proceedings, it is observed that the Inspection was conducted in 2016 i.e. within the specified period of five years under Regulation 16 of the Merchant Bankers Regulations as the SME Issue of Subh Tex had occurred in 2013. As the Promoter and Director, Basanth Agarwal was in charge of the entire merchant banking business of the Noticee during the SME Issue of Subh Tex and thereafter. Further, in terms of Regulation 28A of the Merchant Bankers Regulations, as the Compliance Officer appointed by the Noticee, Nikhil Agarwal was responsible for monitoring the compliance of the Act, Rules and Regulations, etc. issued by SEBI and for ensuring redressal of investor grievances/complaints. Having regard to the position held by the aforementioned individuals, they were under an obligation to ensure the maintenance of records and documents pertaining to the due diligence exercised in the SME Issue of Subh Tex and also for ensuring the same were produced to the Inspection team. Having admittedly failed to comply with the aforementioned requirements, I find that the Noticee had contravened the provisions of Regulation 14(e) read with Regulation 16 of the Merchant Bankers Regulations.

3.7 In the instant proceedings, there was no submission or claim from the Noticee during the Inspection or thereafter until its reply to the Enquiry SCN dated June 21, 2019, wherein it had claimed that in the year 2017 (i.e. nine months after the SEBI Inspection), it was able to trace Jignesh Mehta and retrieve all the information/documents pertaining to the SEM Issue of Subh Tex with the help of police and the same are now available for Inspection. However, as also noted by the DA, there is no evidence supporting such claim of the Noticee and the same merely appears as an afterthought to escape liability.

VIOLATION OF REGULATIONS 31(1), (2) AND (4) READ WITH CLAUSE 3 OF THE CODE OF CONDUCT SPECIFIED IN SCHEDULE III OF THE MERCHANT BANKERS REGULATIONS:

VIOLATION OF CLAUSES 21 AND 29 OF THE CODE OF CONDUCT SPECIFIED IN SCHEDULE III OF THE MERCHANT BANKERS REGULATIONS:

3.8 Regulation 31 of the Merchant Bankers Regulations provides for the obligations of the Noticee on Inspection by SEBI. In terms of Regulation 31(1) of the said Regulations, it shall be the duty of the Director, officer and employee of the Noticee, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in its custody or control and furnish him with the statements and information relating to its activities as a Merchant Banker within such time as the Inspecting Authority may require. As per Regulation 31(2) of the said

Regulations, the merchant banker is obligated to allow the inspecting authority to have reasonable access to the premises occupied by it or by any other person on its behalf and also extend reasonable facility for examining any books, records, documents and computer data in its possession or any such other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority, are relevant for the purposes of the Inspection. Under Regulation 31(4) of the said Regulations, the merchant banker shall provide all assistance to the inspecting authority in connection with Inspection which the merchant banker may reasonably be expected to give.

3.9 As per the Code of Conduct specified in Schedule III read with Regulation 13 of the Merchant Bankers Regulations, the merchant banker is expected to fulfil its obligations in a prompt, ethical, and professional manner (Clause 3). Further, the Merchant Banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, Regulations made thereunder, Circulars and Guidelines, which may be applicable and relevant to the activities carried on by it (Clause 21). The merchant banker shall also ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it in the conduct of its business, in respect of dealings in securities market (Clause 29).

3.10 It is pertinent to note that an intermediary such as a Merchant Banker has to ensure compliance with the provisions of SEBI Act, the Rules or the Regulations made thereunder and act with due skill, care and diligence in the conduct of all its business. In the instant proceedings, the Noticee had failed to meet the eligibility conditions to hold the Certificate of registration. Further, it had failed to maintain records and documents and therefore, could not produce them for Inspection despite repeated assurances given by its Director/Promoter. Further, the Noticee's Promoter/Director and its Compliance Officer had failed to provide the desired assistance to the SEBI Inspection team during the Inspection despite having prior notice of the same. Accordingly, I am of the considered view that the Noticee had failed to comply with its obligations under Regulations 31(1), 31(2) and 31(4) and had acted in complete disregard of Clauses 3, 21 and 29 of the Code of Conduct specified in Schedule III read with Regulation 13 of the Merchant Bankers Regulations.

CONCLUSION:

3.11 As noted from the preceding paragraphs, in the instant proceedings, the Noticee and its Promoter/Director and Compliance Officer had the relevant time, failed to comply with the obligations under the provisions of Regulations 14(e) read with Regulation 16, Regulation 31(1) (2) and (4) and Clause 3, 21 and 29 of the Code of Conduct specified in Schedule III read with Regulation 13 of the Merchant Bankers Regulations. I note that the Noticee's conduct of failing to provide requisite documents / information / assistance to the Inspection team during the Inspection in the manner as determined in the instant proceedings is in complete disobedience with the statutory obligations cast upon it on account of being a SEBI registered intermediary. In this context, reliance is placed on the Order of the Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of ***Balkrishna C. Parsana vs. SEBI, Appeal no. 67/2003 – Order dated September 11, 2003***, wherein while examining the issue of violation of Regulations 21(1) and 21(2) of the Stock Brokers Regulations by the appellant therein for failing to make available the requisite books for Inspection by SEBI, it had observed:

"5. … According to the Respondent "Time is the key essence in any regulatory inspection". Expeditious inspection is the duty of the Respondent and those who fail to co-operate in the inspection are not immune from the penal consequences. SEBI Act has given adequate power to the Respondent to effectively carry out enquiries and inspections. Penal consequences have also been provided in the SEBI Act in this regard. The Respondent is not at the mercy of the Appellant to get the records for inspection, in time. …"

3.12 For the reasons mentioned in the preceding paragraphs, I find myself in agreement with the findings of the DA that the Noticee had violated the provisions of the Merchant Bankers Regulations as indicated at Table I. Having regard to the facts and circumstances of the instant proceedings, I accept the DA's recommendation that the Noticee is liable for action under Section 12(3) of the SEBI Act and Regulation 27 of the Intermediaries Regulations (as amended vide SEBI (Intermediaries) (Amendment) Regulations, 2021 with effect from January 21, 2021) read with Regulation 35 of the Merchant Bankers Regulations.

3.13 In the instant proceedings, the Noticee has submitted that: *"(it) has voluntarily surrendered the merchant (banking) Licence in May 2020".* From the material available on record, it is noted that when the Noticee had earlier applied for surrender of its Certificate of registration on January 10,

2018, SEBI had advised it to apply only on the SEBI Intermediary Portal in terms of the SEBI Circular dated May 2, 2017. However, the Noticee did not thereafter submit any such application for surrender of its Certificate of registration as Merchant Banker through the SEBI Intermediary Portal. Subsequently, vide a letter dated July 19, 2018, the Noticee had applied for renewal of its Certificate of registration upon expiry of its initial registration on July 12, 2017. SEBI had granted permanent registration to the Noticee in February, 2019, pursuant to the Notification dated December 8, 2016 for SEBI (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2016 (see also paragraphs 1.3–1.4). Later, the Noticee had applied for surrender of its Certificate of registration on the SEBI Intermediary Portal vide an Application no. 106526 on March 6, 2020. However, the said Application was rejected by SEBI in view of the pending enquiry against the Noticee and the Application was returned on July 1, 2020. From the material available on record, it is noted that the validity of the Certificate of registration granted to the Noticee had been indicated as July 13, 2012–Perpetual. Accordingly, the Certificate of registration granted to the Noticee still subsists as on date.

ORDER –

4.1 I, in exercise of the powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act and Regulation 27 of the Intermediaries Regulations read with Regulation 35 of the Merchant Bankers Regulations, hereby direct as under:

i. The Certificate of registration of the Noticee, i.e. **M/s Basan Financial Services Limited,** (**Merchant Banker having SEBI Registration No.: INM000011989**), is suspended for a period of **six months**.

ii. Basanth Agarwal, Promoter and Director of the Noticee, is prohibited from being employed or associated with any registered intermediary or other registered person for a period of **one month**.

iii. Nikhil Agarwal, Compliance Officer of the Noticee, is prohibited from being employed or associated with any registered intermediary or other registered person for a period of **one month**.

4.2 This Order shall come into force immediately on the expiry of twenty one (21) days from the date of this Order.

4.3 A copy of this Order shall be served on the Noticee, Basanth Agarwal and Nikhil Agarwal immediately. A copy of this Order shall also be served on all recognized Stock Exchanges and Depositories.

PLACE: MUMBAI
DATE: JULY 5, 2021

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA