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

In respect of Mr. Imtiyazhusain Saiyedmohamed Saiyed- PAN ACCPS4868C- in the matter of Mr. Imtiyazhusain saiyedmohamed Saiyed and Imtsons Investments Ltd.

BACKGROUND

1. Securities Exchange Board of India (**'SEBI'**) carried out investigation of trades of Mr.Imtiyazhusain Saiyed Mohamed Saiyed ('**Mr.Saiyed/Noticee'**) for the period April 2007 to June 2011 ('**IP/Investigation Period**') in the matter of Mr. Imtiyazhusain saiyedmohamed Saiyed and Imtsons Investments Ltd.

2. It was alleged that Mr. Saiyed misrepresented to the investors that he was a Stock Broker while in fact being registered as a Sub-Broker of ICICI Securities Ltd., Stock Broker (**'ICICI Securities'**).

3. In view of the above, SEBI initiated adjudication proceedings against Mr. Saiyed to inquire and adjudge under Section 15HA and 15HB of SEBI Act, 1992 ('**SEBI Act'**) for alleged violation of Regulation 3(a) to (d), 4(1) and 4(2) (f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (**'PFUTP Regulations'**) and clauses A(1), (2), B(4)(b), D(1) and D(4) of the Code of Conduct for Sub-broker as specified in Schedule-II read with Regulation 15 of SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992 (**'Brokers and Sub-Brokers Regulations'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. Adjudicating Officer was appointed vide order dated October 10, 2017 under Section 15-I read with Section 19 of the Securities and Exchange Board of India Act, 1992 (**'SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**'SEBI Adjudication Rules'**) to inquire into and adjudge under Section 15HA and 15HB of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (**'SCN'**) in terms of provisions of Rule 4 of SEBI Adjudication Rules read with Section 15I of SEBI Act was issued on January 11, 2018 to Mr. Saiyed calling upon the noticee to show cause as to why an inquiry should not be held against it under Rule 4 of the SEBI Adjudication Rules and penalty be not imposed for the alleged violation.

6. The SCN were addressed to three different addresses of the noticee i.e. 'B-206, Sakar- VII, Near Nehru Bridge, Ahsram Road, Ahmedabad 380009; 33, Shanne

Burham Society, Sarkhej Rd., Juhapura Sarkhej, Ahmedabad- 380055 and UL 1, Royal Akbar Tower, Juhapura Sarkhej Rd., Juhapura, Ahmedabad- 380 055' as available in the record. The SCN were returned undelivered. Subsequently, SCN were uploaded on the SEBI website under the sub-heading "Unserved Summons/Notices".

7. Vide letter dated February 16, 2018, an opportunity of hearing was granted to the noticee on March 07, 2018. The said SCN and the hearing notice was affixed at the address mentioned above at para 6. However, the entity has failed to appear on the date of hearing and also to file reply to the SCN.

CONSIDERATION OF ISSUES AND FINDINGS:-

8. Charges levelled against Mr. Saiyed as per SCN, submissions of Mr. Saiyed in reply to SCN and the documents available on record have been perused. The issues that arise for consideration are :

a) Whether, Mr. Saiyed had misrepresented the investors/clients as a stock broker registered with SEBI while being registered as a sub-broker of ICICI Securities and violated the respective provisions as alleged in the SCN?
b) If yes, does the violation, on the part of the Saiyed attract monetary penalty under Section 15HA and 15HB of SEBI Act?
c) If yes, what quantum of monetary penalty should be imposed on Mr. Saiyed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

9. 'Waft Investments' (**Waft'**) and its proprietor Mr. Saiyed, during the IP collected money from the investors, promised assured return of investment each month by investing the same in equity. Also, Mr. Sayied misrepresented the investors as Stock Broker while being registered as a Sub-Broker of ICICI Securities.

10. Waft was located at "UL-3 Century Apartment, Juhapura, Ahmedabad -380055 and at "UL-1, Royal Akbar Tower, Juhapura-Sarkhej Road, Ahmedabad – 380055. The Noticee also started a corporate entity on November 27, 2009 in the name of Imtsons Investments Private Ltd., which was subsequently changed to Imtsons Investments Ltd. (**'Imtsons'**).

11. The Noticee during the IP traded through ICICI Securities as client/sub-broker and the details are as follows:

Sr. No.	Name of entity	Capacity	Name of broker	Period	Remarks
1.	Mr. Saiyed	Client	ICICI securities Ltd.	April 2007 to March 2008	
		Sub-broker (Regn No. INS235212714)		02.04.2008 till 04.11.2009	ICICI Securities Ltd. cancelled the sub–broker Agreement on November 04, 2009 due to irregularities observed in its trading.

12. As per the letter of Noticee dated October 30, 2009 to ICICI Securities, as a sub-broker, the Noticee opened more than 500 accounts in his sub-broker capacity with ICICI Securities. Further, the Noticee as a proprietor of Waft, in his letter dated December 21, 2009 to Reserve Bank of India (**'RBI'**), has informed that

a. *"As a sub-broker of ICICI Securities, I collected fund from the clients, deposit in his account and started share trading in his name.*
b. *He used to pay them their share of profit on monthly basis regularly and done this activity under Joint Venture Scheme i.e. fund of the client and sharing my knowledge of training, which was done as proprietor in the name of 'Waft')*
c. *About 1000 clients were attached to him and total outstanding position is amounting to Rs.10 crores"*

13. The Noticee entered into an agreement with its client through a notarized document, which inter-alia states that:

a. "*The Noticee is engaged in the business of equity share trading online through icicidirect.com under A/c no. 8500850333. He possessed BSE Reg. No. INB 011286854 and NSE Regd. No. INB 23077037 duly registered with SEBI as Stock broker of ICICI Securities Ltd.*
b. *He was in need of fund for growth of his business and on receiving such amount, he will invest in the securities market and will pay profit @10% for investment. The relevant portion of the declaration is given below:-*
   i. *"That I am in need of Fund for the growth of my business and as per my request Mr. /Ms. _____residing at_____ is ready to invest with me the sum of Rs. _____ as Joint Venture Holder.*
   ii. *That on receiving the investment amount from him/ her, I shall provide him/ her the receipt in his /her name. I shall invest the said amount in equity share market through ICICI Direct. Com as per our policy and pay him/ her the Fixed proportion of the profit from the said investment. That I shall pay him/ her the amount towards the profit @10% of his /her investment amount i.e. Rs. _____(Rupees_____ only) each month as per our understanding. This amount of share of profit will be paid regularly on____ each month till the investment money remain with me*."

14. Thus, Saiyed misrepresented the investors that he possessed BSE Registration No. INB 011286854 and NSE Registration no. INB 23077037 duly registered with SEBI as stock broker of ICICI Securities, when in fact he was registered as a sub broker of ICICI Securities (BSE Registration no INS 014958313 and NSE Registration no. INS 235212714). It is noticed that INB numbers quoted by the noticee is the registration number of his broker to whom he was affiliated.

15. Inspite of the attempt made, entity failed to reply to the SCN and appear before the Adjudicating Officer in the matter. So, enough opportunity was provided to the noticee. The allegation against the noticee was that Mr. Saiyed collected money from the investors, promising assured return of investment each month by investing the same in equity and Mr. Saiyed misrepresented the investors as Stock Broker while being registered as a sub-broker of ICICI Securities Ltd.

16. With respect to non-submission of reply of the entity reliance is placed on the order of the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others v SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), inter-alia, observed that –

"……*As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices……..".*

17. In view of the above, it is determined that enough opportunities in the interest of principles of natural justice have been accorded to the noticee to provide his contention and given the circumstances mentioned herein above, these proceedings are being carried forward for determination of the issues identified based on information available on records.

18. It is observed from the records available, that Mr. Saiyed in its own submission to Department of Non-Banking Supervision, RBI dated December 21, 2009 had stated "*that he collected money from the clients as a proprietor of Waft, deposited in his account and started trading in his account and share profit on monthly basis regularly. This was done as proprietor in the name of 'Waft Investments'. At present about 1000 clients are attached to him and total outstanding position is amounting to about Rs. 10 crores. Further, Mr. Saiyed as a proprietor of Waft entered into an agreement with its client declaring that he is engaged in the business of equity share trading on-line through ICICIDirect.com duly registered with SEBI. The client funds shall be invested in equity share market through ICICIDirect.com and fixed proportion of the profit i.e. 10% of the client's investment will be paid to the client each month"*.

19. It is also observed from the records available that Mr. Saiyed, as a sub-broker of ICICI Securities had solicited funds from more than 257 investors. Thus, the own submission of Mr. Saiyed and the agreement implicates that Mr. Saiyed misrepresented to the investors as a Stock Broker registered with SEBI while he was a sub-broker to ICICI Securities and accordingly failed to exercise high standards of integrity, due skill care and diligence and mislead the investors and violated respective provisions as specified in Schedule II read with Regulation 15 of Broker and Sub-Brokers Regulations.

20. Further, with respect to the allegation against Mr. Saiyed for violation of PFUTP Regulations, it is amply clear from records as well as his own admission available on records that he has held himself out to be a registered "broker" whereas he was only a sub-broker and has misused the SEBI registration number provided to ICICI Securities. The act of the noticee is manipulative and fraudulent in nature and engaged in an act which was in the nature of deceit upon persons investing in the securities market, by causing to publish that he was stock broker, which was not true.

Issue b) If yes, does the violation, on the part of the Saiyed attract monetary penalty under Section 15HA and 15HB of SEBI Act?

21. As already concluded above, the changes in the SCN are established. Therefore, it now remains to be determined whether the violation attracts the monetary penalty under Section 15HA and 15HB of the SEBI Act.

22. Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, ……once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

23. Based on the above, it is determined that Mr.Imtiyazhusain Saiyedmohamed Saiyed is liable for imposition of monetary penalty for mis-representing the investors as Stock broker registered with SEBI while being registered as Sub-broker of ICICI Securities.

Issue c) If yes, what quantum of monetary penalty should be imposed on Saiyed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

24. While determining the quantum of penalty under Section 15HA and 15HB of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

*"**Factors to be taken into account by the adjudicating officer***

***15J of SEBI Act.** 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."

25. With regard to the above factors, it is noted that the investigation report has not quantified the profit/loss for the violations committed by the Noticee. It is also not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the mis-representation. As regards the repetitive nature of the default, as noted earlier, the noticee misrepresented to the investors as Stock Broker, while he was Sub-broker of ICICI Securities for a long period of time.

26. Given the above, an appropriate penalty is justified to be imposed on Mr.Imtiyazhusain Saiyedmohamed Saiyed under Section 15HA and 15HB of SEBI Act.

ORDER

27. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceedings against Mr.Imtiyazhusain Saiyedmohamed Saiyed stands established in terms of the provisions of the SEBI Act. Accordingly, impose a monetary penalties against Mr.Imtiyazhusain Saiyedmohamed Saiyed as under:

Noticee Name	Regulation Violated	Penal Provisions	Amount of Penalty (in Rs.)
Imtiyazhusain Saiyedmohamed Saiyed, Sub-Broker (BSE Reg. No: INS014958313, NSE Reg. No. INS235212714)	Regulation 3(a) to (d), 4(1) and 4(2) (f) of SEBI of PFUTP Regulations	Section 15HA of SEBI Act	Rs. 20,00,000/- (Rupees Twenty Lakhs only)
	Clauses A(1), (2), B(4)(b), D(1) and D(4) of the Code of Conduct for Sub-broker as specified in Schedule-II read with Regulation 15 of Brokers and Sub-Brokers Regulations.	Section 15HB of SEBI Act	Rs. 5,00,000/- (Rupees Five Lakhs only)

28. Mr. Imtiyazhusain Saiyedmohamed Saiyed shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

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

29. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - IV [EFD1-DRA-IV], SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

30. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Imtiyazhusain Saiyedmohamed Saiyed and also to SEBI.

Date: May 30, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer