WTM/GM/EFD/10/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12 (3) of SEBI Act, 1992 read with Regulation 28 (2) of SEBI (Intermediaries) Regulations, 2008 in the matter of Moongipa Investments Limited.

NOTICEE	SEBI REGISTRATION NO
Moongipa Investments Limited	**NSE INBE 230811734** **NSE INBF 230811734** **BSEINBE 010811736** **BSEINBF 010811736**

BACKGROUND

1. Moongipa Investments Limited ('MIL'/'Noticee') is a stock broker registered with the Securities and Exchange Board of India (SEBI) and is a member of both the National Stock Exchange Ltd. (NSE) and BSE Ltd.(BSE). The registered office of the Noticee is at No.6, 2nd Floor, BN Block, Local Shopping Centre, Shalimar Bagh, New Delhi – 110088.

2. During the period July 11 to July 23, 2015, SEBI received 16 complaints against the Noticee through the SEBI Complaints Redressal System (SCORES) platform. The complaints pertained to non-payment of funds and non-delivery of securities to the clients. In view of this sudden increase in the number of investor grievances filed against the Noticee, SEBI carried out an inspection of the affairs of the Noticee. Pursuant to the inspection, it was observed that the Noticee was allegedly not complying with the provisions of the SEBI Act, the Securities Contract (Regulation) Act, 1956, the SEBI(Stock Brokers and Sub-Brokers)Regulation, 1992 (Broker Regulations) and the circulars issued thereunder. The details of the alleged violations observed during the inspection which was detailed in Inspection Report(IR) are given below,-

   a. Non-segregation of own and clients funds and securities, and misutilisation of clients funds and securities.

b. Indulging in activities other than stock broking business involving accepting deposits and paying interest thereon to clients.

c. Non-compliance with the requirement of periodical settlement of client accounts.

d. Non-redressal of investor grievances.

3. In view of the serious nature of the prima facie violations that were observed during the inspection, SEBI in the interest of protecting the investors in the securities market, in exercise of powers under sections 11(1), 11(4), 11B and 11D of the SEBI Act, 1992, by way of an Ex-Parte -Ad-Interim Order dated September 10, 2015 issued the following directions:

"a) The financial assets of Moongipa Investments Limited (PAN: AAACM5584A) and its directors namely, Mr. Madhur Agarwal (PAN: AAFPA1251Q), Mr. Sudhir Agarwal (PAN: AAFPA1250R) and Mr. Subhash Chander Singal (PAN: AALPS3587R) and its former director Mr. Shiv Kumar Agarwal (PAN: AAFPA1252P) are hereby impounded till further directions. They are further directed not to dispose off or alienate any of their assets, whether movable or immovable, or any interest or investment or charge in any of such assets except for the purpose provided herein.

b) Till further directions in this respect, the assets of these entities shall be utilised only for the purposes of refund of money and/or delivery of securities, as the case may be, to the clients/investors of Moongipa Investments Limited under the supervision of the concerned stock exchanges.

c) The banks and depositories are directed that no debits shall be made in their bank accounts/demat accounts, held jointly or severally, except for the above purpose and after confirmation from the concerned stock exchange in this regard.

d) The concerned stock exchanges and the banks and depositories are directed to ensure that all the above directions are strictly enforced.

e) The aforesaid entities are directed to provide a full inventory of all their assets whether movable or immovable, or any interest or investment or charge in any of such assets, including details of their all bank and demat accounts immediately but not later than 7 working days from the date of receipt of these directions.

f) The aforesaid entities are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either."

4. Thereafter, SEBI vide order dated February 09, 2019, confirmed the findings in the said interim order and inter alia prohibited the Noticee and its directors from accessing the securities market and further prohibited them from buying, selling or dealing in securities, either directly or indirectly or being associated with the securities market in any manner whatsoever, for a period of five years.

5. Simultaneously with the aforesaid proceedings, 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 violation of Regulation 8(3)(f) of the SCRR, Regulation 9 read with Clause A(2) and A(5) of the Code of Conduct under the Stock Broker Regulations and SEBI circulars dated November 18, 1993, December 03, 2009 and August 22, 2011 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.

6. On completion of the proceedings, the DA submitted the report on March 28, 2019 (DA's Report) recommending that the Noticee's certificate of registration as a stock broker be cancelled. Pursuant to this, a post enquiry SCN dated June 03 2019 was issued to the Noticee, under Regulation 28 (1) of SEBI (Intermediaries) Regulations, 2008, to show cause as to why action, as recommended by the DA or any other action as considered appropriate 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. The Noticee did not file any reply to this notice. Thereafter, vide notice dated January 21, 2021, an opportunity of personal hearing was granted to the Noticee on February 10, 2021. Noticee replied to said notice vide email dated February 09, 2021 stating that they had no additional submissions to make and the matter may be proceeded based on their submissions dated November 27, 2018 made before the DA. The summary of the submissions made before the DA is given below:

a. The Noticee met with some financial hardships during the period 2013-14 and 2014-15 due to the fluctuations in the stock market. During mid 2015, when there was a serious liquidity crisis, the directors of the company liquidated their personal assets to pay the liabilities of the clients. However, despite all these efforts, the company could not recover from the liquidity crisis.

b. The inspection conducted by SEBI was a surprise inspection and it happened when the Noticee was in the process of shifting its office premises. Because of the shifting process, during the time the inspection was carried out, the back office was not updated and the bank accounts were not reconciled.

c. The SEBI team inspected the unreconciled and nonupdated back office data and the interim order was also passed based on the said unreconciled data.

d. None of the complaints made against the Noticee is pending as on date. The complainant's were paid by the Exchanges either from the deposit of the Noticee available with the Exchange or from the Investor Protection Fund.

e. The Noticee was under a debt trap on account of losses and liability towards monthly interest payments which needed to be made on loans and advances availed by the Company and was therefore not in a position to fulfil other contractual obligations.

f. The Noticee and its directors have lost everything and have no assets, either movable or immovable, and since their PAN numbers and bank accounts are also frozen, they are not in a position to carry on any business activity.

CONSIDERATION

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

8. The scope of the present proceedings before me is restricted to the enquiry initiated against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 to determine whether the following alleged violations by the Noticee warrant cancellation or suspension of the certificate of registration granted by SEBI or any other action provided under Regulation 27 of the Intermediaries Regulation:

a. Failure to segregate its own and clients' funds and securities as provided under SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 read with Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 and Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

b. Carrying out fund based activities, involving personal financial liability, while being a member of a recognised stock exchange and a SEBI registered stock broker in contravention of Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 (SCRR) and Clause A(2) and A(5) of the Code of Conduct read with Regulation 9 of the SEBI (Stock Broker) Regulations, 1992.

c. Non-compliance with the requirement of periodical settlement of client accounts in contravention of Clause 12 of SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009 read with Clause 33 of Rights and Obligations

documents for Stock Broker, Sub-Brokers and Clients specified in Annexure 4 of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

d. Non-redressal of investor grievances in contravention of the provisions of Regulation 9(e) of the Broker Regulations.

9. Before moving forward, it will be appropriate to refer to the relevant provisions of the SCRR, Broker Regulations, and the SEBI circulars alleged to have been violated by the Noticee:

Securities Contract (Regulation) Rules, 1957

"Qualifications for membership of a recognised stock exchange.

8. The rules relating to admission of members of a stock exchange seeking recognitions 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—

SEBI(Stock Brokers) Regulations, 1992

Conditions of registration.

9.Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,

…

(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II;

CODE OF CONDUCT FOR STOCK BROKERS

A. General.

(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.

SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993,-

"*Regulation of Transactions between Clients and Brokers*

"It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member -

i. Moneys received from or on account of each of his clients and,

ii. the moneys received and the moneys paid on Member's own account.

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the

whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than -

i. money held or received on account of clients;

ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;

iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

D] What moneys to be withdrawn from "clients account". 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.

E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account."

It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following:-

Securities received for sale or kept pending delivery in the market;

Securities fully paid for, pending delivery to clients;

Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);

Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;

Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc."

SEBI Circular no. MIRSD/ SE /Cir-19/2009 dated December 3, 2009

Dealings between a client and a stock broker (trading members included)

Running Account Authorization

12.Unless otherwise specifically agreed to by a Client, the settlement of fun

ds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

(e)The actual settlement of funds and securities shall be done by the broker, atleast once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall

also explain the retention of funds/securities and the details of the pledge, if any.

SEBI Circular no. CIR/MIRSD/16/ 2011 dated August 22, 2011

Simplification and Rationalization of Trading Account Opening Process.

Annexure –4 RIGHTS AND OBLIGATIONS OF STOCK BROKERS, SUB-BROKERS AND CLIENTS as prescribed by SEBI and Stock Exchanges

ADDITIONAL RIGHTS AND OBLIGATIONS

33. The stock broker shall make pay out of funds or delivery of securities, as the case may be, to the Client within one working day of receipt of the payout from the relevant Exchange where the trade is executed unless otherwise specified by the client and subject to such terms and conditions as may be prescribed by the relevant Exchange from time to time where the trade is executed."

ISSUES FOR CONSIDERATION

Failure to segregate its own and clients' funds and securities

10. SEBI circulars mandate that stock brokers should segregate clients funds/securities from their own funds/securities. Client funds are required to be maintained in separate bank accounts and also required to be recorded separately. Further, stock brokers are not permitted to utilise client funds for meeting their own pay-in obligations. I note from the inspection report that as per the client master data maintained by the Noticee, they had allotted a total of 2555 unique client codes. It was further noted that, during the inspection, in respect of 221 clients there was a net pay-out obligation of Rs. 17.37 crores. The receivables from clients was only Rs. 0.69 crore and therefore there was a net admitted liability of Rs. 16.68 crores towards clients as per the books of accounts of the Noticee.

11. It is further noted from the findings of the NSE inspection, which was communicated to the Noticee vide letter dated May 18, 2015, that a difference of 4,19,134 shares in 169 scrips amounting to Rs. 1,10,94,737, was observed between quantity of securities as per the back office register of securities maintained by the Noticee and the holding statement of the beneficiary account, for the sample dated February 28, 2015. It was also stated in

the report that there was non-segregation of transactions between client's and own bank accounts and 53 instances were observed where funds were transferred from own bank accounts to client bank accounts.

12. It is further noted from the inspection report that when the inspection team had reached the office of the Noticee, they had witnessed several clients who were present at the office. These clients, as per the IR, were requesting the Noticee to return their funds and securities. It is further recorded in the report that when Madhur Agarwal, director of the Noticee, was questioned during the inspection regarding the claims of the investors, he had stated that *"some of the client securities were sold by [the Noticee] to meet [their] payin/margin obligations."* It is also noted from the records that NSE vide its letter dated August 13, 2015 had requested Delhi Police to take appropriate action against MIL for misappropriation of clients' securities.

13. I note from the reply of the Noticee that it has not offered any specific rebuttals to the observations made in the IR regarding misappropriation of clients' securities. It has only stated that the mismatch in data pertaining to the client accounts observed during the SEBI inspection was due to the non-reconciliation of client data during the period when the Noticee was shifting its office. I, however, do not find this explanation to be convincing as the Noticee has failed to provide the 'reconciled data' showing the true picture at any point during the course of these proceedings. I also note from the reply that the Noticee has admitted that they have failed to meet contractual payment obligations towards clients due to losses suffered by it.

14. In view of the above, I find that the Noticee has not only failed to segregate own funds and securities from the funds and securities of the clients as mandated under SEBI circulars, but also misappropriated client funds and securities for meeting its own payment obligations and thereby contravened the provisions of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 read with Circular No.

MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 and Circular No. CIR/MIRSD/16/2011 dated August 22, 2011.

Indulging in activities other than stock broking business

15. It is noted from the assets/liabilities statement submitted by the Noticee vide letter dated August 03, 2015, that an amount of Rs. 6.30 crores was shown under the head 'Non client loan accounts'. It is further noted from the IR that as per the Debtor/Creditor statement furnished by the Noticee during the inspection, MIL had taken unsecured loans from 53 entities amounting to Rs. 6.83 crores and was paying an interest in the range of 9%-18% on the said entities. It was also observed that some of the said entities had UCC allotted by the Noticee; however, none of these entities had ever traded through MIL. It was also observed during the inspection from the statement of accounts furnished by the Noticee that the MIL had paid interest to the said clients after deducting TDS.

16. I further note that SEBI had received a complaint, dated May 05, 2016, through the SCORES platform alleging that the complainant who used to trade through the Noticee on the F&O segment was asked maintain the margin money of Rs. 75,50,000 with Noticee with an assurance that interest would be paid on the said amount. It was further alleged that vide letter dated April 24, 2015, Noticee urged the complainant to give a letter in favour of the Noticee stating that the outstanding margin money has been converted into a loan. It was further stated that after July 09, 2015, the Noticee stopped paying interest on the said amount and the complainant has also not got back the principal amount despite repeated requests. I also note that the Noticee has stated in its reply that *"the Noticee Company was under a debt trap on account of losses and liability towards monthly interest being paid by the company on loans/advances."*

17. In view of the above, I am of the view that the Noticee was accepting money in the nature of deposits/loans from clients and other entities and was paying interest on the said

amounts. I note that rule 8(3)(f) of the SCRR prohibits registered stock brokers from engaging in any activity or business involving personal financial liability, other than stock broking business. In view of the same, I hold that the Noticee by engaging in accepting deposits/loans from clients and other entities, engaged in activities involving financial liability, that was not incidental to its activities as a stock broker and thereby contravened Rule 8(3)(f) of the SCRR) and Clause A(2) and A(5) of the Code of Conduct read with Regulation 9 of the Broker Regulations.

Periodic Settlement of Client Accounts

18. I note from the IR that it was observed during the inspection that the Noticee was not settling the accounts of its clients periodically as mandated under SEBI circulars MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI/MIRSD/Cir-01/2011 dated May 13, 2011. It was further noted that Noticee had given an undertaking dated August 02, 2015 stating that 70% of the accounts were being settled periodically. I, however, note that no proof has been given by the Noticee to substantiate the said claim.

19. It is noted that SEBI circular dated December 03, 2009 prescribes that unless otherwise specifically authorised by a client in writing to maintain a running account, the stock broker has to settle the accounts within 24 hours of the pay-in/pay-out. I note from the IR that it was observed during the inspection that accounts of certain clients were not even settled once during the period April 01, 2014 – August 03, 2015. Further, even if the undertaking dated August 02, 2015, given by the Noticee, is taken at face value, it would still remain that accounts of 30% of clients are not being settled periodically as mandated under the SEBI circulars.

20. In view of the above, I have no hesitation in holding that the Noticee has failed to periodically settle client accounts within the timelines prescribed under the SEBI circulars

MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI/MIRSD/Cir-01/2011 dated May 13, 2011.

Non-redressal of investor grievances

21. I note from the information available on record that as on August 04, 2015, 22 complaints for cumulative claim amount of Rs. 1.24 crores were pending against the Noticee on the SCORES platform. I note from the reply filed by the Noticee that it has not denied that these complaints were pending at the time these proceedings were initiated against the Noticee. Instead the Noticee has tried to rely on resolution of the complaints through the Investor Grievance Redressal Panel (IGRP) of the NSE and the Investor Redressal Grievance Committee (IGRC) of BSE and payments made to the complainants from the Investor Protection Fund maintained by the exchanges and security deposit and other funds of the Noticee available with the exchanges, to claim that no complaints are pending as on date. I am, however, unable to accept this contention raised by the Noticee as the resolution of a complaint through stock exchange dispute resolution mechanism does not exonerate an intermediary from its liability cast under the SEBI regulations for failure to satisfactorily redress investor grievance. On the contrary, the very fact that an investor had to approach the stock exchange dispute resolution framework is confirmation of the fact that the Noticee had failed to satisfactorily redress investor grievances.

22. I note that Regulations (e) of the Stock Broker Regulations provides as one of the conditions of registration that the broker "shall take adequate steps for redressal of grievances, of the investor within one month of the date of receipt of the complaint." In view of the same, I hold that the Noticee has failed to satisfactorily redress investor grievances as mandated under Regulation 9(e) of the Broker Regulations.

23. It is further noted from the records that the Noticee was expelled by NSE on November 09, 2015 and the BSE had declared MIL as a defaulter on September 30, 2015, for non-

compliance with the orders of the IGRP and IGRC. These orders related to complaints preferred by the clients of the Noticee alleging misappropriation/non-transfer of securities and funds.

24. In view of the above, I agree with the findings of the DA that the Noticee has violated the provisions of the SEBI Act, the SCRR, the Broker Regulations and the circulars made there under as detailed in the paragraphs 14, 17, 20 and 22 of this Order.

ORDER

25. I, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration granted to the Noticee / Moongipa Investments Limited (SEBI Registration No. NSE INB/E/F 230811734/ BSE INB/F/E 010811736).

Place: Mumbai
Date: June 18, 2021

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