WTM/GM/EFD/14/2021-22

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 Unickon Securities Private Limited.

NOTICEE	SEBI REGISTRATION NO
Unickon Securities Private Limited	**INF231283830/INB231283830** **INB 011282531/INF011282531** **IN-DP-CDSL-435-2007**

BACKGROUND

1. Unickon Securities Private Limited ('USPL'/'Noticee') is a stock broker registered with the Securities and Exchange Board of India (SEBI) and is a member of the National Stock Exchange Ltd. (NSE) and the BSE Ltd. (BSE). USPL is also registered with SEBI as a Depository Participant and has an agreement with Central Depository Services (India) Limited ('CDSL'). The registered office of the Noticee is at D-221, Sector 63, Noida, Uttar Pradesh - 201301.

2. During the period starting January 2014, SEBI started receiving a large number of investor complaints against the Noticee. The complaints pertained to non-payment of funds and non-delivery of securities to clients. Given this sudden increase in the number of investor grievances filed against the Noticee, SEBI carried out an inspection of the affairs of the Noticee on March 19 and March 20, 2014. Pursuant to the inspection, it was observed that the Noticee was allegedly not complying with the provisions of the SEBI Act, the SEBI (Stock Brokers and Sub-Brokers) Regulation, 1992 (Broker Regulations), SEBI (Intermediaries Regulations) 2008 (Intermediaries Regulations), SEBI (Depositories and Participants)Regulations, 1996 (DP Regulations) and the circulars issued thereunder. The

details of the alleged violations observed during the inspection which was detailed in the Inspection Report(IR) are given below:

a. Does not satisfy the criteria of 'fit and proper person'.

b. Failure to furnish complete material information to SEBI during the inspection.

c. Misutilisation of clients funds and securities, illegally pledging of client securities and diversion of funds to related entities.

d. Failure to submit the Internal Audit Report for the half-year ending September 2013 onwards to NSE and BSE.

e. 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 May 26, 2014, issued the following directions:

"A. restrain Unickon Securities Pvt. Ltd. (PAN: AAPFS5325P) and its directors namely, Mr. Gajendra Nagpal (PAN: AADPN5511A) and Mr. Ram Mohan Gupta (PAN: AGDPG7175M) from accessing the securities market and further prohibit them from buying, selling or dealing in securities market, either directly or indirectly or being associated with the securities market in any manner whatsoever, with immediate effect, till further directions;

B. direct the above entities to cease and desist from the activities as noted above."

4. SEBI vide order dated March 02, 2015, confirmed the findings in the said interim order. Thereafter, vide final order dated March 15, 2016, SEBI 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 ten 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 9(a) and 9(b) of the Broker Regulations, Regulation 7(2)(e) read with Schedule II of the Intermediary Regulations, Regulations 6A(1) and 6A(2) of the DP Regulations 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. The Show Cause Notice (SCN) which was issued to the Noticee in terms of Regulation 25(1) of the Intermediaries Regulations, by the DA, was sent to the registered address of the Noticee. The SCN, however, came back undelivered. Thereafter, the SCN was served on the Noticee at its alternate address – 69, II Floor, Regal Building, Connaught Place, New Delhi – 110001. The SCN was served by way of affixture at the alternate address of the Noticee. However, as no reply was received from the Noticee, the DA proceeded with the matter ex-parte. On completion of the proceedings, the DA submitted the report on November 30, 2018 (DA's Report) recommending that the Noticee's certificate of registration as a stock broker be cancelled.

7. Pursuant to this, a Post Enquiry SCN (P-SCN) dated December 21, 2018, 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 advice to file a reply, if any, within 21 days from the date of receipt of the notice. The P-SCN, which was sent to the alternate address of the Noticee, returned undelivered. Thereafter, it was attempted to

serve the P-SCN to the Noticee's registered address. However, as the P-SCN could not be served on the Noticee, even by way of affixture, at the two addresses available with SEBI, the P-SCN was uploaded on the SEBI website under >Enforcement>Unserved Summons/Notices.

8. Thereafter, the Noticee was granted an opportunity of personal hearing on February 12, 2021. The notice of the issue of the post enquiry SCN and the hearing notice was served via newspaper publication in the Delhi Edition of one English newspaper (Times of India) and one Hindi newspaper (Dainik Jagran) on February 17, 2021. However, the Noticee failed to appear for the hearing.

9. In view of the above, I am satisfied that sufficient opportunities have been provided to the Noticee and the principles of natural justice have been complied with in this regard. I am, therefore, compelled to proceed with the present matter ex-parte based on the material available on record.

CONSIDERATION

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

    a. the alleged violation of Regulation 9(a) and 9(b) of the Broker Regulations Regulation; and

    b. the failure to satisfy the 'fit and proper criteria,

    by the Noticee warrants cancellation or suspension of the certificate of registration granted by SEBI or any other action provided under Regulation 27 of the Intermediaries Regulation.

11. Before moving forward, it will be appropriate to refer to the relevant provisions of the Broker Regulations, Intermediaries Regulations and DP Regulations alleged to have been violated by the Noticee:

SEBI(Stock Brokers) Regulations, 1992

5. Conditions of registration.

(*e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.*

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

(a) the stock broker holds the membership of any stock exchange;

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

SEBI (Depositories and Participants) Regulations, 1996

Requirement of fit and proper.

6A. (1) Every depository, its sponsor, shareholder and participant shall satisfy the fit and proper criteria at all times.

(2) For the purpose of determining whether an applicant, depository, its sponsor, shareholder, director and key management personnel or a participant, is a 'fit and proper person' under these regulations, the Board may take into consideration the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

(3) If any question arises as to whether a person is fit and proper, the Board's decision on such question shall be final.

SEBI (Intermediaries) Regulations, 2008

Criteria for determining a 'fit and proper person'

For the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer, the director, the promoter and the key management persons by whatever name called –

(a) integrity, reputation and character;

(b) absence of convictions and restraint orders;

(c) competence including financial solvency and networth;

(d) absence of categorization as a wilful defaulter.

ISSUES FOR CONSIDERATION

Violation of Regulation 9(a) and 9(b) of the Broker Regulations

12. I note that Section 9(a) of the Broker Regulations provides that the certificate of registration granted by the Board is subject to a stock broker holding a valid membership of any recognised stock exchange. It is further noted that Regulation 9(b) mandates, as part of the conditions of registration, that the stock broker complies with the rules, regulations and bye laws of the stock exchange of which it is a member. I note from the material available on record that the NSE has expelled the Noticee vide order dated September 05, 2014, inter alia for misuse of clients securities, non-segregation of transactions between own and client accounts, failure to redress investor grievances and non-co-operation in the submission of documents, records and data. It is also noted that the BSE has also declared the Noticee as a defaulter w.e.f September 10, 2014. It is also noted that the rules of the stock exchanges provide that once a member of an exchange is declared a defaulter or

expelled by any other exchange then such a member cannot continue or be admitted as a member.

13. I note that the eligibility conditions mandated under the Broker Regulations for grant of certificate of registration must be complied with by entities seeking registration not just at the time of registration, but they must continue to satisfy the specified criteria throughout the period of validity of their registration.

14. In view of the above, as the Noticee has been expelled/declared defaulter by the stock exchanges where it was a member, for non-compliance with their rules, regulations, bye laws and other provisions of the securities laws, I note that the Noticee no longer complies with the conditions of registration specified in Regulation 9(a) and (b) of the Broker Regulations.

Failure to satisfy the 'fit and proper criteria'

15. As stated in para 12, the Noticee has been expelled/declared defaulter by both the stock exchanges where it was a member. Further, as stated in para 4, SEBI vide order dated March 15, 2016, has 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 for a period of 10 years.

16. I note that Regulations 5(e) of the Broker Regulations provides that an applicant seeking registration as a stock broker has to satisfy the 'fit and proper criteria' specified under Schedule II of the Intermediaries Regulations. It is further noted that Regulation 6A of the DP Regulations provides that all registered participants have to comply with the 'fit and proper criteria' at all times. The compliance with the 'fit and proper' criteria specified under Schedule II of the Intermediaries regulations is applicable to all SEBI registered

intermediaries and the compliance has to be satisfied on a continuous basis as long as an intermediary is registered with SEBI.

17. I note from Schedule II of the Intermediaries Regulations that some of the important factors which are to be taken into account while deciding whether an entity satisfies the fit and proper person, is its integrity, reputation, character and absence of restraint orders in respect of the entity.

18. It is, therefore, noted that while determining the compliance of an entity with the 'fit and proper' criteria, restraint order passed against it is an important consideration. As stated earlier, the restraint order passed against the Noticee was on serious charges related to siphoning of client funds and securities. Moreover, the conduct of the Noticee was also found to satisfy the parameters of 'fraud' as defined under the SEBI (Prohibition of Fraudulent and Unfair Trade Practises) Regulations, 2003. Thus, I note that the violations established against the Noticee are serious in nature and cast aspersions on the integrity, reputation and character of the Noticee. It is also pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) vide its order dated April 26, 2021, has already upheld the common SEBI order restraining the Noticee while deciding an appeal preferred by one of the directors of the Noticee. The Hon'ble Tribunal while dismissing the appeal concurred with the findings in the SEBI order that *"Unickon Securities not only misused the client securities without the consent of the clients through Unickon Fincap but itself also transferred the securities in its own demat account and, thereafter the funds were used for various purposes of financing group companies through inter-corporate deposits, fixed deposits, generating the income (maybe only in the books) much in excess than permitted."*

19. In view of the above, considering the totality of the facts and circumstances, I am of the view that the Noticee no longer satisfies the 'fit and proper' criteria specified under

Schedule II of the Intermediaries Regulations read with Regulation 5(e) of the Broker Regulations and Regulation 6A of the DP Regulations.

20. 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 Broker Regulations and the DP Regulations as detailed in paragraphs 14 and 19 of this Order.

ORDER

21. I, in exercise of powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the SEBI (Intermediaries) Regulations, 2008, I hereby cancel the certificate of registrations granted to the Noticee / Unickon Securities Private Limited (SEBI Registration Nos. INF231283830, INB231283830, INB 011282531, INF011282531, IN-DP-CDSL-435-2007).

Place: Mumbai
Date: June 23, 2021

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