WTM/GM/EFD 1-DRA-2 / 85 /2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA,

MUMBAI

FINAL ORDER

Under Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008 in respect of Crecer Financial Services Pvt. Ltd. (Registration No. INZ000001636) (the 'Noticee'), a SEBI registered Stock Broker

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1. Background –

1.1. The present matter emanates from a letter dated July 31, 2017 addressed by the Reserve Bank of India ("**RBI**") to SEBI, informing that the Noticee, which had a certificate of registration as a stock-broker from SEBI was indulging in unauthorised acceptance of public deposits by promising to provide returns of 18% to 24% per annum by investing the said funds in the stock markets.

1.2. Upon receipt of the said complaint, necessary enquiries were made with the stock exchanges, namely NSE and BSE, by SEBI.

1.3. NSE vide its e-mail dated November 09, 2017 informed that on account of non-receipt of admission fee from the Noticee, its membership rights on Capital Markets, Futures and Options and Currency Derivatives segments were revoked on September 01, 2015.

1.4. BSE, on the advice of SEBI, carried out an inspection of the Noticee on November 15, 2017 and reported that,

a. the Noticee was not traceable at its registered office and correspondence office addresses as available with the Exchange;

b. the Directors of the Noticee too were not reachable; and

c. it could not be ascertained whether the Noticee was raising funds from investors and promising assured returns to them.

1.5. Pursuant to the above inspection, the Disciplinary Action Committee ("**DAC**") of BSE vide its order dated February 19, 2018 *inter alia* observed that the Noticee had neither provided the requisite documents nor co-operated with the Exchange since the initiation of the inspection, and that the Noticee had blatantly violated the Rules, Regulations and Bye-laws of the Exchange and directions issued by SEBI. Also, it was observed by the DAC that the Noticee had failed to provide any explanation with regard to the serious wrongdoing of collection of deposits from the public. Accordingly, the DAC held that the Noticee had failed to adhere to the principles of the Code of Conduct prescribed under the Brokers Regulations especially pertaining to the requirements of integrity, exercise of due skill and compliance with statutory requirements; and indulged in improper conduct which raises serious issues of probity, diligence, reputation and character of the member as a Stock Broker. Considering the same, the DAC directed that the membership right of the Noticee be withdrawn.

1.6. Concurrently while the matter was being examined by SEBI, an additional letter dated January 17, 2018 was received from the RBI forwarding therewith a complaint filed by P.V. Gopalkrishna against the Noticee and its directors with the Telengana State Police. P.V. Gopalkrishna in the complaint had stated,

a. that his daughter had been recruited by Zohra Gulabh Shaik, the owner and Managing Director of the Noticce, to collect deposits from the public on behalf of the Noticee;

b. that Zohra Gulabh Shaik frequently changed her office address and she was planning to permanently flee away with the money of the public; and

c. that the Noticee did not open a single demat account in the name of any investor and had not maintained any accounting records of its investors.

The Complainant had also provided the list-wise details of Rs. 23,41,099 raised from investors during 2015. The said amount and the promised due interest were never paid by the Noticee. The complainant also provided copies of certificates issued by the Noticee to the investors from whom money had been collected. The said certificates read as, "*This is to certify that <Name of investor> has paid the company charges of amount <Amount Invested> (in words) for trading on behalf of his/her trading account for the tenure of <Period of Investment> months in Crecer Financial Services Pvt. Ltd.*" The certificate also mentioned that: "(*Company charges are not refundable for any usage of amount/shares in respective client's Trading/ Demat account for any reason*)".

1.7. Further to the examination by SEBI, the following were observed with respect to the directors of the Noticee:-

a. The registration application of the Noticee filed with SEBI mentioned the PAN No. of Zohra Shaikh as DRMPS4063P, while, the 'Agreement for Lease & License entered into by Zohra Gulab Shaik (for renting the correspondence address premise of the Noticee) as director of the Noticee, mentioned the PAN No. as BPMPS0864L issued in the name of Zohra Bi Gulab Shaikh.

Accordingly, it was observed that not only she was in possession of two PAN cards, but also she mentioned different names in each of the PAN cards.

b. A management staff of the Noticee, Imran Khan was, according to the complainant, the husband of Zohra Gulab Shaik. The registration application of the Noticee filed with SEBI contained an experience letter issued to Yati Chandan, one of the directors of the Noticee, by an Authorized Person ('**AP**') namely; Imran Khan having PAN No. AXBPK1640A. This experience letter was a crucial document for obtaining SEBI registration by the Noticee. In the said experience letter, Imran Khan had informed that he was registered as an AP with Sharekhan from November 02, 2010 to April 03, 2012 under registration no. AP010748010926, and thereafter he applied for registration with Angel Broking. On inquiry, BSE, vide its e-mail dated May 25, 2018, informed that Imran Khan was registered as an AP with Sharekhan Limited under PAN no. AXBPK1640A.

c. However, the PAN number mentioned by Imran Khan in the application for AP of broker Angel Broking was BPYPK8109Q and name mentioned against the same was Imran Khaleel Khan. The said application also contained a copy of the Driving Licence of Imran Khaleel Khan, wherein, his address was mentioned as "*Worli B.D.D, Chawl No. 121, Room No. 58, G.M. Bhosale Road, Worli, Mumbai – 400018*". The said address was also mentioned as the Registered Office address of the Noticee in the records of SEBI and also as the address of the two of the directors of the Noticee. Accordingly, it was observed that Imran Khan who had issued experience certificate to Yati Chandan and Imran Khaleel Khan, who was also the husband of Zohra Gulab Shaik are one

and the same person. This was also borne out from the photos of the individuals in the aforementioned two PAN cards (AXBPK1640A & BPYPK8109Q) and the Driving License (DL No. MH0120100124996).

1.8. After the above examination, SEBI referred the matter relating to raising of money by the Noticee and its directors from public, to the State Government of Telangana and the matter relating to multiple PAN cards to the Income Tax Department.

2. Enquiry proceedings against the Noticee –

2.1. Consequent to the above examination, Enquiry Proceedings were initiated against the Noticee, a registered intermediary, in terms of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the "**Intermediaries Regulations**"), by appointing a Designated Authority (hereinafter referred to as the "**DA**"), and communication of the same vide Communication of Order appointing Designated Authority dated November 20, 2018.

2.2. Pursuant to the said appointment, the DA issued an SCN bearing No. EAD-2/SS/AKS/OW/P/2019/142/1 dated January 02, 2019 under Regulation 25 (1) of the Intermediaries Regulations. The said SCN alleged that the Noticee had contravened the following provisions of law, viz.—

a. Regulation 9(f) of the SEBI (Stock Broker and Sub-broker) Regulations, 1992 (the "**Brokers Regulations**") read with Clause A(1), A(2), A(5) of Schedule II, Brokers Regulations;

b. Regulations 27(i) and 27(viii) of the Brokers Regulations; and

c. Regulations 5(e) of the Brokers Regulations read with Schedule II of Intermediaries Regulations.

2.3. The DA served the said SCN on the Noticee on January 07, 2019 *via* e-mail and on January 10, 2019 *via* Speed Post Acknowledgement Due. Even though, the SCN had been duly served on the Noticee, no reply was received by the DA from the Noticee. Considering the non-receipt of any reply, the DA decided to proceed *ex-parte* on the basis of material available on record.

2.4. For the violations as stated above, the DA, in his report dated January 18, 2018, found that the Noticee had contravened all the provisions of law as alleged in the said SCN.

3. Post – Enquiry SCN dated April 16, 2019 –

3.1. After considering the Enquiry Report, a post –enquiry SCN dated April 16, 2019 bearing no. SEBI/HO/EFD/DRA2/KSB/9852/1/2019 under Regulation 28(1) of the Intermediaries Regulations was issued to the Noticee (enclosing therewith a copy of the Enquiry Report), calling upon the Noticee to show cause as to why action as recommended by the DA or any other penalty should not be imposed on it, in terms of Regulation 28 (1) and (2) of the Intermediaries Regulations, as deemed fit, by the Competent Authority.

3.2. As per the post –enquiry SCN read with the Enquiry Report, it was *inter alia* alleged–

a. that Crecer had by way of its acts as a stock broker failed to abide by the Code of Conduct as specified in Schedule II of the Brokers Regulations;

b. that Crecer having ceased to be a member of NSE and BSE and it had failed to comply with the rules, regulations and bye-laws of the stock exchange of which it was a member; and

c. that Crecer had indulged in improper conduct raising issues of probity, diligence, reputation and character of a stock broker which raised the question as to whether it was 'fit and proper' to continue as a stock broker.

3.3. The post–enquiry SCN dated April 16, 2019 issued to the Noticee was returned undelivered. Consequent to this, the said post –enquiry SCN was served by affixture at the address of the Noticee through the Bombay Stock Exchange on July 15, 2019. The same was also uploaded on the SEBI website.

3.4. Thereafter, an opportunity of personal hearing before the Designated Member (hereinafter referred to as the "**DM**") was granted to the Noticee on October 22, 2019. Since, the Noticee was not available at the last known address, it was decided to communicate the hearing notice by way of newspaper publication. Accordingly, newspaper publication of the hearing notice was made in three newspapers namely, Times of India, Mumbai edition (English), Nav Bharat, Mumbai edition (Hindi) and Maharasthtra Times, Mumbai edition (Marathi). On the appointed date of hearing, no appearance was entered by the Noticee.

3.5. In this respect, it is noted that the SCN dated January 02, 2019 issued by the DA, calling upon the Noticee to show cause as to why action should not against it in terms of the Intermediaries Regulations, was duly served on the Noticee. Similarly, the post-enquiry SCN dated April 16, 2019 was also served on the Noticee

by affixture, and the hearing notice notifying the granting of personal hearing before the Designated Member on October 22, 2019 was communicated to the Noticee by publication in three newspapers. The Noticee, however, has continued to absent itself from participating in the proceedings right from the initiation of the Enquiry proceedings. Thus, it is felt that no meaningful purpose shall be served by keeping the proceedings pending, and accordingly it is decided that the matter shall be proceeded with *ex parte*, on the basis of the material on record.

3.6. The Noticee, who was under an obligation to rebut or justify the alleged violations, has despite the receipt of SCNs failed to do so by not submitting any reply in the matter. In this regard, the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd. vs. SEBI* (Appeal No. 68 of 2003 decided on December 08, 2006) are relevant to rely upon. In the said order, it was stated that- *"… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*. Further, in similar circumstances, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), *inter alia*, observed that *"… 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 levelled against them in the show cause notices…*".

4. Consideration of issues and findings –

Allegation No. 1: Failure to Comply With Conditions of Registration

4.1. The DA has in its findings in the enquiry report stated that it is established that the Noticee has failed to maintain the requisite standards to be maintained as a stock

broker stipulated in the Brokers Regulations, to observe due skill, care and diligence and to comply with the rules, regulations and bye-laws of the stock exchange of which it was a member.

4.2. In this regard, reference is drawn to Regulation 9(f) of the Brokers Regulations, which requires as one of the conditions of grant of registration to a stock broker that it shall at all times abide by the Code of Conduct as specified in Schedule II of the Brokers Regulations.

4.3. The relevant provisions in this regard are as under:

Regulation 9(f) of the Brokers Regulations

"Conditions of registration.

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

(a) …

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

SCHEDULE II, Brokers Regulations

"CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

(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.

(3)…

(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."

4.4. Upon a reading of the above provisions, it is evident that as a condition of registration as a stock broker, it is required of such a stock broker to abide by the Code of Conduct prescribed under Schedule- II of the Brokers Regulations, at all times. The said Schedule *inter alia* prescribes that a registered stock broker shall maintain high standards of integrity, promptitude and fairness; observe due skill, care and diligence; and to comply with the Act and the rules, regulations issued by the Government, the Board and rules, regulations and bye-laws of the stock exchange of which it is a member.

4.5. In this regard, reference is made to the communication received from the RBI dated July 31, 2017 informing that the Noticee, which bore a certificate of registration as a stock-broker from SEBI was indulging in unauthorised acceptance of public deposits by promising to provide returns of 18% to 24% per annum by investing the said funds in the stock markets. Also, reference is drawn to the subsequent communication received from the RBI dated January 17, 2018 whereby it was informed that the company was not registered with the RBI as an NBFC, and was indulging in unauthorised acceptance of public deposits. It was also informed vide the said letter that the Noticee did not exist at the registered address, which was a residential address in a *chawl*.

4.6. Further, reference is drawn to the letter dated February 11, 2019 received from the Office of the Additional DG of Police, CID, Telangana, whereby it has been informed that pursuant to a complaint against Mrs. Zohra Gulab Shaik, Gulab Shaik, Babu Devaya Balla, Mrs. Yati Chandan and Mrs. Rakesh Kumar Naidu, directors and persons related to the Noticee Company, a case in Cr. No. 261/2016 under sections 406 and 420 of the IPC has been registered. It has been also informed by way of the above letter that some of the accused have been arrested and a charge sheet has been filed before the XI Additional Chief Metropolitan Magistrate, Hyderabad for commencement of trial.

4.7. On a perusal of the above facts, it is apparent that the Noticee was involved in activities that were in violation of standards of integrity and compliance with statutory requirements as prescribed in the Code of Conduct under Schedule- II of the Brokers Regulations. In the absence of replies from the Noticee at any stage of the proceedings, it is presumed that the Noticee has no intent to contest the above facts.

4.8. That being the case, I concur with the view of the DA that the Noticee has clearly violated Regulation 9(f) of the Brokers Regulations read with the Code of Conduct as specified in Schedule II of the Brokers Regulations.

Allegation No. 2: Cessation of Stock Exchange Membership

4.9. The DA has in its findings in the enquiry report has stated that the Noticee ceased to be a member of NSE from September 01, 2015 and of BSE from February 19, 2018. Accordingly, the Noticee did not fulfill the primary condition to hold the certificate of registration as stock broker granted by SEBI.

4.10. In this regard reference is made to 27 (i) and (viii), and Regulation 9(a) of the Brokers Regulations.

4.11. The relevant provisions in this regard are as under:

Regulation 9(a) of the Brokers Regulations

"***Conditions of registration.***

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"

27 (i) and (viii) of the Brokers Regulations

"***Liability for action under the Enquiry Proceeding Regulations.***

27. A stock broker or a sub-broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker or a sub-broker, as the case may be if he—

(i) ceases to be a member of a stock exchange; or

(ii) …

(viii) fails to comply with the rules, regulations and bye-laws of the stock exchange of which he is a member;

4.12. The above provision makes it categorical that any registration granted by SEBI under Regulation 6 shall be subject to the stock broker holding the membership of any stock exchange. Further, if a stock broker ceases to be a member of a stock exchange or fails to comply with the rules, regulations and bye-laws of the stock

exchange of which he is a member, then in such circumstance, the stock broker shall be liable for action under the Intermediaries Regulations.

4.13. In this regard, it is stated that by way of email dated November 09, 2017, it was communicated by NSE that the Noticee company had ceased to be a broker-member from September 01, 2015. Further, reference is drawn to the Order dated February 19, 2018 of the DAC of BSE instituted pursuant to the advice by SEBI. In the said order, it was *inter alia* observed that the Noticee had neither provided the requisite documents nor co-operated with the Exchange since the initiation of the inspection and that the Noticee had blatantly violated the Rules, Bye-laws and Regulations of the Exchange and directions issued by SEBI and the Exchange. Also, it was observed that the Noticee had failed to provide any explanation with regard to the serious wrongdoing of collection of deposits from the public. Considering the above reasons, the Order held that the Noticee had failed to adhere to the principles of the Code of Conduct prescribed under the Brokers Regulations, which raised serious issues of probity, diligence, reputation and character of the member as a Stock Broker, and accordingly directed that the membership right of the Noticee be withdrawn with immediate effect. Thus, the Noticee ceased to be a member of the BSE from February 19, 2018.

4.14. In light of the above facts, it is evident that the Noticee does not satisfy the condition as specified in Regulation 9(a) of the Brokers Regulations and as such becomes liable for action as specified in Regulation 27 of the Brokers Regulations. Thus, I concur with the view of the DA, as expressed in the enquiry report, that

the Noticee did not fulfill the primary condition to hold the certificate of registration as stock broker granted by SEBI, and accordingly is liable for action as prescribed in Regulation 27 of the Brokers Regulations.

Allegation No. 3: Not a Fit and Proper Person

4.15. The DA in its findings in the Enquiry Report has stated that the acts and conduct of the Noticee and its directors have clearly rendered the Noticee to be not a 'fit and proper person'.

4.16. In this regard, reference is drawn to Regulation 5(e) of the Brokers Regulations and Schedule-II of the Intermediaries Regulations.

4.17. The relevant provisions in this regard are as under:

Regulation 5(e), Brokers Regulations

"***Consideration of application for grant of registration.***

5.The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,-

(a)…

(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"

SCHEDULE II, Securities and Exchange Board of India (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 net worth; and

(d) absence of categorization as a wilful defaulter."

4.18. In this regard, reference is made to the complaints received from the RBI against the Noticee and its directors with respect to the unauthorised acceptance of public deposits. Further, reference is also drawn to the Order dated February 19, 2018 of the DAC of BSE directing the revocation of the membership right of the Noticee on the ground that the Noticee had failed to adhere to the principles of the Code of conduct prescribed under the Brokers Regulations, which raised serious issues of integrity, reputation and character of the member as a Stock Broker. Furthermore, reference is also drawn to the case in Cr. No. 261/2016 under sections 406 and 420 of the IPC registered against Mrs. Zohra Gulab Shaik, Gulab Shaik, Babu Devaya Balla, Mrs. Yati Chandan and Mrs. Rakesh Kumar Naidu, directors in the Noticee Company, and consequently thereto the charge sheet filed before the XI Additional Chief Metropolitan Magistrate for commencement of trial.

4.19. I note that the allegation of unauthorised collection of deposits from the public, and the arrests of the directors and persons related to the Noticee and filing of chargesheet for commencement of trial against them have seriously eroded the reputation and belief in the competence, fairness, honesty, integrity and character

of the Noticee. Reputation, integrity and character being important factors for consideration of the Fit and Proper status of an intermediary, I find that the erosion of reputation of the Noticee renders it not a Fit and Proper person to operate as a stock broker.

4.20. Accordingly, I concur with the view of the DA that the Noticee is not a 'fit and proper person' as required under Regulation 5(e) of the Brokers Regulations read with Schedule II of the Intermediaries Regulations.

5. Order –

5.1. I note that the DA has in the Enquiry Report recommended that the certificate of registration of the Noticee be cancelled.

5.2. Considering the violations brought out in the foregoing paragraphs, I, in exercise of powers conferred upon me in terms of Section 12(3) and Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 23 and 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby direct the cancellation of the certificate of registration of the Noticee.

5.3. The order shall come into force with immediate effect.

5.4. A copy of this order shall be forwarded to the Noticee immediately. A copy of this Order shall also be forwarded to all the recognized stock exchanges and depositories.

Date: March 30 , 2020 **G. MAHALINGAM**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA