BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/AR/2019-20/7403]

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

M G Capital Services Limited
PAN: AAEPT9209L

In the matter of

M G Capital Services Limited

BACKGROUND OF THE CASE

1. Pursuant to the receipt of various complaints from investors against the Sub-broker, M/s. Rishabh Shares and Securities (hereinafter referred to as **'Rishabh'**), the Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted inspection of the books of accounts and other documents of M/s. M. G. Capital Services Ltd. (hereinafter referred to as **'MG Capital' / 'Noticee'**), a member broker of the National Stock Exchange of India Ltd. (NSE) and registered with SEBI under registration No.- INB 230701235 with a focus on the matters relating to various investor complaints against its sub-broker, viz. Rishabh.

2. The inspections was conducted for the dealings of the Noticee and Rishabh during the year 2003 and 2004 (hereinafter referred to as '**the relevant period**') and, *prima facie***,** revealed the following violations w.r.t. the Noticee;

a. The Noticee had allowed its sub-broker Rishabh to take over exposure;

b. The Noticee allowed Rishabh to trade as a sub-broker through FMS Securities Ltd (hereinafter referred to as **'FMS'**) which was a sister concern of the Noticee;

c. There was no segregation between own transactions of Rishabh and the transactions of Rishabh's clients which were executed through the Noticee;

d. Contract notes were not issued to the clients of its sub-broker, Rishabh by the Noticee;

e. The Noticee had not registered its ultimate clients through Rishabh by not executing the required KYC forms, tri-partite agreements, etc.

f. It was also alleged that the Noticee tried to mislead the Inspecting Authority of SEBI by hiding material facts and giving false and incorrect replies.

3. In view of the above observations/findings, it was alleged that the Noticee has violated/contravened the provisions of clauses A(2), B(2) and C(6) of the code of conduct specified under schedule II read with regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as '**Brokers Regulations'**) and Adjudication Proceedings were initiated against the Noticee. The aforesaid Adjudication Proceedings were concluded vide the Adjudication Order dated November 14, 2011 (hereinafter referred to as '**the Adjudication Order**') wherein a penalty of Rs. 5,00,000/- (Rupees Five Lakh) was imposed on the Noticee.

4. Thereafter, the Noticee preferred an appeal in the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT'**) against the Adjudication Order. The matter was remanded by the Hon'ble SAT vide its order dated July 31, 2012 (hereinafter referred to as '**the SAT Order'**) observing that neither

the Adjudication Order nor the show cause notice specify the provisions of law which stands violated by the alleged irregularities.

APPOINTMENT OF ADJUDICATING OFFICER

5. Pursuant to the remand of the matter by the Hon'ble SAT, Shri D. Ravi Kumar was appointed as the Adjudicating Officer (hereinafter referred to as '**AO'**) in the matter, vide communique dated August 30, 2012 under section 19 read with section 15I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with Sections 15I(1) and 15I(2) of the SEBI Act, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules and Sections 15F and 15HB of the SEBI Act. Subsequently, the matter was transferred to Shri Suresh B. Menon on June 22, 2015. Pursuant to the transfer of Shri Suresh B. Menon, the undersigned was appointed as the Adjudicating Officer in the matter vide communique dated March 25, 2019. Subsequently, the appointment order of AO was amended in the matter which was communicated to the undersigned vide communique dated September 24, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Pursuant to my appointment as AO which was communicated vide communique dated September 24, 2019, a Show Cause Notice no. SEBI/EAD-1/AA/ASR/29105/2019 dated November 01, 2019 (hereinafter referred to as '**SCN**') was issued to the Noticee, under Rule 4 (1) of the SEBI Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on him under the provisions of Sections 15F and 15HB of the SEBI Act, if applicable. A brief

summary of the findings and allegations made against the Noticee in the SCN is given below**:**

a. *MG Capital was a broker of NSE with SEBI registration No. INB230701235. Rishabh Shares and Securities (herein referred to as **'Rishabh'**) was a registered sub broker of the MG Capital. It is observed that when information was sought from MG Capital about the dealings of Rishabh, it has submitted that Mr. Abhay Nigam and Mr. Arun Nigam were the dealing persons of Rishabh from the beginning till the last date of their dealing. It was further submitted by MG Capital that they had stopped dealing with Rishabh from July 15, 2004 due to the payment problems and also because Rishabh owed about Rs. 15 lakhs to MG Capital.*

b. *On being asked about the trading of Rishabh in Futures and Options segment, it was admitted by Santosh Kr. Goyal, Managing Director, MG Capital that they allowed Rishabh to trade in the Futures and Options segment stating that those transactions were not their ultimate clients' transactions and were Rishabh's own transactions. He further admitted that Rishabh was also doing its own transactions in the cash segment. Further on being asked about the manner in which MG Capital segregated the transactions of Rishabh and its clients, he admitted that they were maintaining only one code for Rishabh i.e. CR085 and all the transactions, irrespective of his individual capacity and sub broker capacity, were being put under that code only. Similarly, all the payments were being received/made from/to their bank account only.*

c. *In view of the above, it is alleged that you have violated provisions of SEBI Circular ref no: SMD/POLICY/CIR-11/97 dated May 21, 1997 on Registration of Sub-brokers and Circular ref no: SMDRP/Policy/CIR-39/2001 dated July 18, 2001 on Unique Client*

Code read with provisions of clauses A (2) and B (2) of Code of Conduct as prescribed for the Stock Brokers under regulation 7 of Broker Regulations.

d. *It is observed that Rishabh was also trading with FMS Securities Ltd. (hereinafter referred to as '**FMS Securities**'), member BSE (which was sister concern of MG Capital), despite the fact that Rishabh was not registered with FMS Securities. Further, it appears that FMS Securities was also aware of this fact. It is alleged that that the payments relating to the trades of Rishabh with FMS Securities were being adjusted against the accounts of Rishabh maintained with MG Capital. The aforesaid allegation has been admitted to be a fault on part of MG Capital by Mr. Santosh Kumar Goyal. Therefore, it is alleged that you have violated provisions of clause A (2) of the Code of Conduct as prescribed for the Stock Brokers under regulation 7 of Broker Regulations.*

e. *It is further alleged that MG Capital had not registered its ultimate clients through Rishabh by not submitting into the KYC form and not executing the required Broker-Sub-Broker-Client agreement. In view of the same, it is alleged that you have violated provisions of SEBI Circular ref no: SMDRP/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 on Uniform Documentary requirement for trading read with provisions of clause A (2) of Code of Conduct as prescribed for the Stock Brokers under regulation 7 of Broker Regulations.*

f. *Further, it is also alleged that the MG Capital has tried to mislead the inspection conducted by SEBI by not providing true/correct information to SEBI. For example, MG Capital had stated that it had not dealt with Rishabh since July15, 2004, however, from the client demat ledger of Rishabh provided by MG Capital, it has been*

observed that trading was done by MG Capital for Rishabh even after July 15, 2004.

g. *Further, from the trading details of Rishabh obtained from the NSE, it is observed that there had been trading done for Rishabh by MG Capital even after July 15, 2004.*

h. *NSE vide its letter dated June 27, 2007, has confirmed that client for the aforesaid trades was Rishabh and the above trades were executed from the terminal id 6271 located at Shop No. 6 & 23, Zila Parishad Complex (near bus stand), Gurdaspur, Punjab. The said VSAT terminal belonged to MG Capital. MG Capital vide its letter dated June 20, 2007 also confirmed that terminal id 6271 belonged to them and was the main Corporate Manager ID on their VSAT ID no. 5589.*

i. *Further, from the demat statement of Abhay Nigam for account no. 10633342, it has been observed that 4000 shares of Entegra Ltd. have been transferred from the MG Capital on January 23, 2007 and these shares were transferred to CM Religare Securities on January 31, 2007 which is indicative of the fact that MG Capital was aware of the whereabouts/ contact details of Rishabh or its partners. Therefore, it appears that the Noticee tried to mislead SEBI by stating that they had not dealt with Rishabh after July 15, 2004, however from the above observations it is alleged that the Noticee had dealt with Rishabh even after July 15, 2004 till January, 2007.*

j. *It is observed that Mr. Santosh K Goyal had made a submission that 4000 shares of Entegra Ltd. were sold off at the request of the wife of Abhay Nigam based on the decision of the Board of MG Capital. Mr. Goyal was advised to submit documentary evidence.*

MG Capital was also asked to furnish the copy of the minutes of the relevant board meeting where it had decided to help Abhay Nigam by giving them 4000 shares of Entegra Ltd. It has been observed from the document submitted by the MG Capital in this respect that the document is simply a print out from the computer and does not appear to be the genuine minutes of the board meeting of the corporate. On scrutiny of the submitted document, he was advised to submit the copy of the original minutes of the relevant board meeting. However, despite such advice copy of the original minutes of the relevant board meeting had not been submitted.

k. *Further, from the statement of account of Rishabh provided by MG Capital for the period from April 01, 2004 to March 30, 2005, it has been observed that MG Capital has charged VSAT charges of Rs. 24000/- from Rishabh for the fourth quarter of the FY ending March, 2005.*

l. *From the facts mentioned above, it appears that the Noticee provided wrong information regarding their dealings with Rishabh. Therefore, it is alleged that by providing wrong and misleading information to the inspection team of SEBI, Noticee has violated the provisions of clauses A (2) and C(6) of the Code of Conduct as prescribed for the Stock Brokers under regulation 7 of Broker Regulations.*

m. *It is further alleged that MG Capital had allowed the Rishabh to take over exposure in the securities market. The admission of the fact by MG Capital that Rishabh owes Rs. 15 lakh to MG Capital, prima facie, shows that MG Capital had allowed over exposure to Rishabh in the securities market. In view of the same, it is alleged that you have violated provisions of clause A (2) of the Code of Conduct as*

prescribed for the Stock Brokers under regulation 7 of the Broker Regulations.

n. *Thus, from the above it is alleged that MG Capital had not exercised proper due diligence and care while dealing with Rishabh. There were no proper checks and balances carried out by MG Capital with regard to Rishabh. The trading of ultimate clients of Rishabh and its own trading of Rishabh were, allegedly, done under a single code of Rishabh i.e. CR085 despite the fact that Rishabh was also acting as a sub broker. It is alleged that there was no segregation between the transactions of Rishabh and its ultimate clients. Payments were also made/received from the account of the partners of Rishabh.*

7. An attempt was made to serve the SCN issued to the Noticee via Speed Post AD (hereinafter referred to as '**SPAD**'). However, the SCN returned undelivered. Subsequently, the SCN was sent to the alternative address of the Noticee which was obtained from National Stock Exchange (NSE), which returned undelivered once again. The NSE was also advised to deliver the SCN to the Noticee. However, NSE also could not deliver the SCN to the Noticee. Thereafter attempts were made to serve the SCN to the Noticee along with hearing notice on its official email (also obtained from NSE) and also by way of affixture in terms of Rule 7(c) of the Adjudication Rules. However, the attempts to deliver SCN by way of email and affixture also failed. Finally, the SCN and the hearing notice were served on the Noticee, in terms of Rule 7(d) of the Adjudication Rules, by way of newspaper publication on February 18, 2020. The hearing was scheduled for March 17, 2020.

8. I note that despite the service of SCN and Hearing notices on the Noticee by way of newspaper publication, the Noticee neither appeared nor made any submission in the matter. No response was received from the noticee. Therefore, I am compelled to proceed in the matter on the basis of material

available on record which also include the submissions made by the Noticee before the Adjudicating Officer during the course of earlier Adjudication Proceedings which were remanded by the SAT Order.

CONSIDERATION OF ISSUES

9. I have carefully perused the charges levelled against the Noticee, their earlier replies made during previous Adjudication proceedings (prior to the remand by Hon'ble SAT) and the documents / material available on record. Before proceeding further, I would like to briefly narrate the details of events that have taken place in the instant matter through the table given below:

Sr. No.	Date	Remarks
1	May 14, 2007	Inspection of the Noticee conducted
2	March 18, 2008	Adjudication initiated in the matter pursuant to the Inspection
3	Nov 14, 2011	Adjudication Order passed in the matter imposing penalty of Rs. 5,00,000/-
4	July 31, 2012	Hon'ble SAT remanded the matter back to SEBI observing that neither the impugned order nor the show cause notice specify the provisions of law which stands violated by the alleged irregularities
5	August 30, 2012	Shri D. Ravikumar appointed as AO in the matter
6	June 24, 2013	SCN is served on the Noticee but no reply is received
7	January 17, 2014	Reminder letter is issued to Noticee, as no reply to the SCN received. Noticee still does not submit its reply to the SCN.
8	June 22, 2015	Shri Suresh Menon is appointed as AO in the matter
9	March 01, 2016	A reminder letter is once again issued to the Noticee to submit its reply to the SCN.
10	December 06, 2016	Another letter is issued to the Noticee which returned undelivered
11	February 07, 2018	A reminder letter is issued to the alternative address of the Noticee.
12	March 25, 2019	The undersigned is appointed as AO in the matter
13	April 08, 2019	Internal correspondence sent to concerned department for necessary changes in the communique so as to issue a proper SCN with the necessary changes as per the directions of SAT. The concerned department of SEBI is requested to amend the order appointing AO as the alleged violation of various circulars by the Noticee was not mentioned in either the order of appointment of AO or the communique.
14	Sep 24, 2019	A fresh order for appointment of the undersigned as AO and communiqué, in this regard, incorporating all the required changes are approved.
16	November 01, 2019	An SCN is issued to the Noticee incorporating all the changes made in the appointment order of AO. SCN returns undelivered.
17	February 18, 2020	As delivery of SCN and subsequent hearing Notices failed by SPAD, email and affixture, notice is published on the Newspaper and hearing is scheduled on March 17, 2020.

10. It is also pertinent to refer to the relevant provisions of the Broker Regulations and various circulars of SEBI, alleged to have been violated by the Noticees, which are given below:

Stock-Brokers to abide by Code of Conduct.

7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

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.

B. DUTY TO THE INVESTOR

(2) ISSUE OF CONTRACT NOTE: A stock-broker shall issue without delay to his client of client of the sub-broker, as the case may be a contract note for all transactions in the form specified by the stock exchange.

C. STOCK-BROKERS vis-à-vis OTHER STOCK BROKERS

(6) FALSE OR MISLEADING RETURNS: A stock-broker shall not neglect or fail or refuse to submit the required returns and not make any false or misleading statement on any returns required to be submitted to the Board and the stock exchange.

Circulars

- *SEBI Circulars ref: SMD/POLICY/CIR-11/97 dated May 21, 1997(Registration of Sub-brokers)*
- *SMDRP/Policy/CIR-39/2001 dated July 18, 2001(Unique Client Codes)*
- *SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 (Uniform Documentary Requirements for Trading),*

Non-segregation of Rishabh's own transactions and the transactions of its clients:

11. The Noticee was a member broker of the NSE and Rishabh was a registered sub-broker of the Noticee. It is observed that when information was sought from the Noticee about the dealings of Rishabh, it had submitted that Mr. Abhay Nigam and Mr. Arun Nigam were the dealing persons of Rishabh from

the beginning till the last date of their dealing with Rishabh. It was further submitted by the Noticee that they had stopped dealing with Rishabh from July 15, 2004 due to the payment problems and also because Rishabh owed about Rs. 15 lakhs to the Noticee.

12. The Noticee allowed its sub-broker viz. Rishabh to trade in its own account in the Cash segment / Futures & Options segment and all the trades of Rishabh, whether in its individual capacity or on behalf of its clients, were executed under a single code i.e. CR085. Similarly, all the payments related to the transactions done by Rishabh (for itself and its clients) were being received/made from/to the Rishabh's bank account only, which shows that there was no segregation between Rishabh's own transactions and the transactions of Rishabh's clients which were executed through the Noticee.

13. In respect of the above, it is observed that the specific instances or details of trades of Rishabh and its clients have not been placed on record to indicate that Rishabh has traded in its own account and also on behalf of its clients. However, it is evident from the statement of Mr. Santosh Kumar Goyal, Managing Director (MD) of the Noticee, that was made during the course of inspection, that Rishabh was transacting on behalf of its clients also. The relevant extract of the statement made by the MD of the Noticee is *"We have allotted only one code CR085 to Rishabh only and Rishabh was doing all the trades in that code only. Further, all the payments were being received and made to Rishabh only and there was no third party payment made/received. However, delivery of shares were given to third party and/or also received from third party."*

14. Therefore, it is clear that the Noticee delivered and received shares directly to/from third parties, who were the clients of Rishabh. Also, it is established that the transactions executed on behalf of Rishabh were not only for

Rishabh's own account but were also for clients of Rishabh and that the Noticee was fully aware of the same.

15. Therefore, it is evident that there was no segregation of the transactions of Rishabh and that of its clients and the Noticee was not maintaining any details with respect to the dealings of Rishabh with its clients. Thus, I conclude that Noticee failed to effectively supervise/control Rishabh's activities and its dealings/affairs with its clients, which enabled Rishabh to ultimately defraud the investors. Therefore, I conclude that the Noticee has violated the provisions of SEBI Circular ref no: SMD/POLICY/CIR-11/97 dated May 21, 1997 on Registration of Sub-brokers and Circular ref no: SMDRP/Policy/CIR-39/2001 dated July 18, 2001 on Unique Client Code read with provisions of Clauses A (2) and B (2) of Code of Conduct as prescribed for the Stock Brokers under regulation 7 of Brokers Regulations.

Dealings of Rishabh with FMS Securities Ltd:

16. It is observed that Rishabh had also traded through FMS, which is a sister concern of the Noticee and a member of BSE, despite the fact that it was not registered as a sub-broker of FMS. The payments relating to Rishabh's trades with FMS were adjusted against the accounts of Rishabh maintained with the Noticee. The same was admitted by the MD of the Noticee during the course of inspection.

17. In respect of the above allegation, I have perused the inspection report and the material available on record and observe that during the relevant period Rishabh had traded through FMS and payments relating to such trades of Rishabh were adjusted against the accounts of Rishabh maintained with the Noticee. I have observed that for the dealings of Rishabh with FMS, shares have been transferred from/to the demat account of Rishabh, held with the Noticee, which was used by Rishabh for transacting on behalf of its clients. In

addition to this, the inspection has also revealed that client IDs of the clients of Rishabh were also appearing in the pool and beneficiary accounts of FMS. Therefore, it is established that FMS, which is a sister concern of the Noticee, was dealing on behalf of the clients of Rishabh through Rishabh, even though Rishabh was not registered with them as a sub-broker. The fact is that payments towards such transactions of Rishabh with FMS were adjusted by the Noticee against Rishabh's accounts maintained with it, which the Noticee should not have done. Rishabh transacted through FMS under the full knowledge of the Noticee. MD of the Noticee had accepted it before the inspecting authority also, as a fault on their part.

18. I am of the view that the Noticee should have been more cautious towards the dealings of its sub-broker, Rishabh with its sister concern, FMS, more particularly when such trades of Rishabh with FMS were adjusted against the accounts of Rishabh maintained with the Noticee. The aforesaid allegation is admitted to be a fault on the part of MG Capital by Mr. Santosh Kumar Goyal, its MD. Such lack of supervision and control over the activities of its sub-broker, establish that the Noticee has failed to exercise skill, due care and diligence as far as the aforesaid transactions of Rishabh with the Noticee's sister concern viz. FMS are concerned and to that extent I hold the Noticee guilty of violating clause A (2) of the code of conduct specified under schedule II read with Regulation 7 of the Brokers Regulations.

<u>Not registering of clients of Rishabh and not entering into broker-sub broker- client agreement:</u>

19. It has been alleged in the SCN that the clients of Rishabh were not registered with the Noticee, their KYC documents were not executed with the Noticee and that the Noticee did not enter into tri-partite agreement i.e. the broker-sub-broker-client agreement with Rishabh and its clients.

20. The concept and the requirement of the broker-sub broker-client agreement was introduced in the year 2003 and its strict compliance was made effective from April 01, 2005, in terms of SEBI Circular ref no: SMDRP/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 on Uniform Documentary requirement for trading. The Noticee has stated during the course of inspection that it had stopped dealing with Rishabh with effect from July15, 2004. However, it is evident from the documents on record that till January 05, 2007, the Noticee had not moved any application for cancellation of registration /affiliation of Rishabh as their registered sub-broker. Thus, it can be inferred that Rishabh was registered as a sub-broker affiliated to the Noticee much after the aforesaid requirement relating to the agreement was made mandatory from April 01, 2005 and therefore, the Noticee was under obligation to comply with the same after the issuance of the aforesaid SEBI directive. Even assuming that the Noticee had stopped all dealings with Rishabh with effect from July 15, 2004, it was required to have entered into broker- sub broker agreement with Rishabh which was essential prior to the requirements of tri-partite agreement. The Noticee could not produce before the inspecting authority either copy of such broker- sub broker agreement or tri-partite agreement entered into with Rishabh and its clients. Thus, I conclude that no such agreement was executed by the Noticee with Rishabh and/or clients of Rishabh and to that extent, the Noticee has violated the provisions of SEBI Circular ref no: SMDRP/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 on Uniform Documentary requirement for trading read with provisions of clause A (2) of Code of Conduct as prescribed for the Stock Brokers under regulation 7 of Broker Regulations.

<u>Providing incorrect/false information and misleading the inspecting authority:</u>

21. It is observed that the Noticee had misled the SEBI inspections by not providing true/correct information. The Noticee stated that it had not dealt with Rishabh with effect from July 15, 2004, but the client demat ledger indicated

that the Noticee had dealt with Rishabh even after July 15, 2004. Relevant details of such trades done by the Noticee for Rishabh on BSE and NSE after July 15, 2004 were provided to it along with the SCN. NSE had also confirmed vide its letter dated June 27, 2007 that client for the trades referred to at para 7 of the SCN, given in the table below, was Rishabh and the trades were executed from the terminal ID 6271, which belonged to the Noticee.

Date	**Scrip's Name**	**Quantity Purchased/(Sold)**
24.08.2004	SYNDIBANK	(100)
24.08.2004	ACC	(100)
11.11.2004	AMBUJA CEMENT RAJAS	1400 (Dlv)
21.03.2005	ANDHRA BANK	1000 (Dlv)
24.08.2004	COLOR CHIPS	(250)
31.03.2005	BAG FILMS	1000 (Dlv)
24.08.2004	BEML	(50)
16.07.2004	CANBANK	300
24.08.2004	CENTBOP	(100)
11.08.2004	COREPARENT	100 (Recd)
24.08.2004	DRREDDY	(10)
24.08.2004	FDC	(100)
24.08.2004	HDFC	(25)
24.08.2004	HIMCHLFUT	(1000)
31.03.2005	HOCL-DEPO SETT	200 (Dlv)
24.08.2004	ICICIBANK	(50)
24.08.2004	IDBI BANK	(100)
16.07.2004	LUPIN LTD.	50
12.08.2004	NIIT	300 (Dlv)
24.08.2004	PNB	(10)
31.03.2005	PNB	50 (Dlv)
14.07.2004	RELIANCE	50
24.08.2004	QUINTECRA SOL/SOFTA	(200)
24.08.2004	TATAFIN	(200)
24.08.2004	TIML	(500)

22. A relevant extract of the trade log for the trades executed by the Noticee on behalf of Rishabh on August 20, 2004 are reproduced below:

Sr. No.	Date	CM Symbol	Trade Number	Trade time	Trade Price	Total Trade Quantity
45221	20-Aug-04	ACC	200408200291795	11:55:18	264.55	50
45222	20-Aug-04	ACC	200408200291796	11:55:18	264.55	50
45223	20-Aug-04	ARHAMFISCL	200408200293398	11:56:07	6.7	100
45224	20-Aug-04	ARHAMFISCL	200408200293578	11:56:13	6.7	150
45225	20-Aug-04	BAGFILMS	200408200292015	11:55:26	8.5	500
45226	20-Aug-04	BAGFILMS	200408200292016	11:55:26	8.5	500
45227	20-Aug-04	BEML	200408200292402	11:55:37	161.3	50
45228	20-Aug-04	CENBNK	200408200292597	11:55:45	7.4	100
45229	20-Aug-04	DRREDDY	200408200293880	11:56:21	692.45	10
45230	20-Aug-04	FDC	200408200294345	11:56:30	45.35	100
45231	20-Aug-04	HDFCBANK	200408200294550	11:56:37	357.55	25
45232	20-Aug-04	HIMACHLFUT	200408200295850	11:57:05	8.4	233
45233	20-Aug-04	HIMACHLFUT	200408200295851	11:57:05	8.4	2
45234	20-Aug-04	HIMACHLFUT	200408200295852	11:57:05	8.4	100
45235	20-Aug-04	HIMACHLFUT	200408200295853	11:57:05	8.4	665
45236	20-Aug-04	ICICIBANK	200408200296120	11:57:12	269.8	50
45237	20-Aug-04	IDBIBANK	200408200296416	11:57:17	46.65	76
45238	20-Aug-04	IDBIBANK	200408200296417	11:57:17	46.6	24
45239	20-Aug-04	JAYPEEHOT	200408200297271	11:57:39	18.2	100
45240	20-Aug-04	JAYPEEHOT	200408200297444	11:57:44	18.15	100
45241	20-Aug-04	JAYPEEHOT	200408200297445	11:57:44	18.1	112
45242	20-Aug-04	PNB	200408205319247	11:58:00	256.75	10
45243	20-Aug-04	PRISMCEM	200408205319909	11:58:17	14.55	350
45244	20-Aug-04	SOFFIASOFT	200408205320103	11:58:26	19	50
45245	20-Aug-04	SOFFIASOFT	200408205320104	11:58:26	18.9	150
45246	20-Aug-04	SYNDIBANK	200408205320256	11:58:33	35	100
45247	20-Aug-04	TATAFIN	200408205320416	11:58:38	41.25	100
45248	20-Aug-04	TATAFIN	200408205320417	11:58:38	41.25	100
45249	20-Aug-04	TATATELSER	200408200299676	11:58:45	18.2	179
45250	20-Aug-04	TATATELSER	200408200299677	11:58:45	18.2	321
45251	15-Sep-04	FLEX	200409150539985	13:15:50	48.7	5

23. Further, the Noticee had sold 4,000 shares of Entegra Ltd. from the account of Abhay Nigam, who is one of the partners of Rishabh, on January 23, 2007. The Noticee stated during the course of inspection that the said transaction was done on the request of wife of Abhay Nigam, based on the decision of the Board of the Noticee. However, the Noticee did not furnish the minutes of the relevant Board Meeting.

24. Further, it is also observed that despite its claim that it has not dealt on behalf of Rishabh after July 15, 2004, the statement of account of Rishabh provided by the Noticee for the period from April 01, 2004 to March 30, 2005, shows that Noticee had realized V-SAT charges of Rs. 24,000/- from Rishabh for the fourth quarter of the FY ending March 2005.

25. It is evident that transactions were executed by the Noticee on behalf of Rishabh even after July 15, 2004. I observe from the records of previous Adjudication proceedings that the Noticee had submitted that such sale transactions were done to clear the outstanding balances lying in Rishabh's financial ledger and that the credits referred therein, were the dividends received in his account. It had also explained the rationale of realizing V-SAT charges from the account of Rishabh even after July 15, 2004. However, the trades which were executed in the accounts of Rishabh for the period after that, does not seem to be deliberate. The Noticee having said this has also provided the rationale behind such transactions which were not done in the normal course but were done to clear the dues of the Noticee.

26. I note from the records of the earlier Adjudication proceedings that with respect to 4,000 shares of Abhay Nigam - one of the partners of Rishabh - which were sold by the Noticee on January 23, 2007, the Noticee has stated that the same was done at the behest of his wife in accordance with the decision taken in the meeting of its Board of Directors. It has been alleged that the Noticee has not furnished the minutes of the relevant Board Meeting regarding sale of said 4,000 shares. It is observed that Abhay Nigam is an entity different from Rishabh and any transaction in his individual account cannot be construed as transaction done on behalf of Rishabh until and unless it is supported by some other material facts of the case. It is apparent from the inspection report that demat account No. IN301330-17705259 (joint account in the names of Arun Nigam and Abhay Nigam) was used for transactions done by Abhay Nigam and Arun Nigam in the capacity of a sub-

broker under their trading name i.e. Rishabh Shares and Securities and the aforesaid transaction of 4,000 share was done in some other demat account i.e. IN301774-1063342, which was in the individual name of Abhay Nigam. Therefore, in the absence of any other material on record, it cannot be concluded on the basis of transaction of 4,000 shares done in the account of Abhay Nigam on January 23, 2007 that the Noticee has misled the inspecting authority by stating that it had not dealt with Rishabh after July 15, 2004.

Allowing overexposure to Rishabh:

27. It has been alleged in the SCN that as per the Noticee's own admission, Rishabh owed Rs.15 lakh to it, which *prima facie* indicate that Rishabh was allowed by the Noticee to take over exposure. The Noticee has stated that during the trading by Rishabh, sufficient stock was lying with them to cover the risk factor. The alleged overexposure was allowed to Rishabh against the stock kept in margin, which was subsequently adjusted against the debit balance.

28. I have noted that while alleging about the overexposure, the inspections are silent on the matter that whether such exposures were covered by the stock kept in margin. I note from the records of the previous adjudication proceedings that the Noticee has stated that it had frozen account of Rishabh for regular trading with effect from July 15, 2004 and thereafter, to clear the outstanding debit balances in his books of accounts, his stock kept in margin were sold and such debit balances were adjusted. In the absence of any other relevant information/documents on record, I agree with the said submission of the Noticee that the alleged overexposure of Rs. 15 lakh allowed by the Noticee to Rishabh was covered by the stock kept in margin.

29. Therefore, in view of the discussions above, I conclude that i) due to the failure of the Noticee in segregation of Rishabh's own transactions and the transactions of its clients; ii) by allowing dealings of Rishabh with its sister concern FMS Securities Ltd, as a sub-broker; and iii) by not registering clients

of Rishabh and not entering into broker-sub broker- client agreement, the Noticee has violated the provisions of provisions of SEBI Circular ref no: SMD/POLICY/CIR-11/97 dated May 21, 1997 on Registration of Sub-brokers, Circular ref no: SMDRP/Policy/CIR-39/2001 dated July 18, 2001 on Unique Client Code and SEBI Circular ref no: SMDRP/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 read with provisions of clauses A (2) and B (2) of Code of Conduct as prescribed for the Stock Brokers under regulation 7 of Broker Regulations.

30. The aforesaid alleged violations make the Noticee liable for monetary penalty under section 15F and 15HB of SEBI Act, 1992 which reads as follows:

15F.Penalty for default in case of stock brokers

If any person, who is registered as a stock broker under this Act,-

(a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker.

(b) Fails to deliver any security or fails to make payment of the amount due to the investor in a manner within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(c) Charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty of one lakh rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

15HB.Penalty for contravention where no separate penalty has been provided

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

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

> ***Factors to be taken into account by the adjudicating officer.***
> ***15J.*** *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.*

32. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the concerned department of SEBI has not quantified the profit/loss for the violations committed by the Noticees in the said matter. However, I have considered other factors in this matter including the period of violations committed by the Noticee and note that the inspection was conducted in this matter for the dealings of the Noticee in the year 2003 and 2004.

ORDER

33. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Five lakhs) on the Noticee under Sections 15F and 15HB of the SEBI.

34. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days from April 15, 2020, either by way of

demand draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of the penalty, the Noticees may contact the support at portalhelp@sebi.gov.in.

35. In the event of failure to pay the said amount of penalty within 45 days from April 15, 2020, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

36. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to M G Capital Services Limited and also to the Securities and Exchange Board of India.

Date: March 31, 2020
Place: Mumbai

Dr. ANITHA ANOOP
ADJUDICATING OFFICER