WTM/GM/EFD/39/2019–20

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN RESPECT OF –

NOTICEE	**SUMEET KUMAR BHAGAT [PAN: AGRPB6998B]** **[REGN NO. INS019775019 & INS239409514]** **SUB-BROKER, AFFILIATED TO INDIA INFOLINE LTD.**

BACKGROUND –

1. Sumeet Kumar Bhagat ("**Noticee**") is a sub-broker, affiliated to India Infoline Limited and has Registration Nos. INS239409514 and INS019775019 since July 13, 2010 and September 03, 2010 respectively.

2. The facts in the instant proceedings as noted from the Enquiry Report dated October 26, 2018 ("**DA Report**") are provided below:

   i. SEBI vide order dated April 25, 2016 had concluded that Mass Infra Realty Limited (**MIR**L) and its directors had indulged in illegal mobilization of money, through the issuance of Non-convertible Debentures (**NCDs**) to public, in violation of the provisions of the Companies Act, 1956 the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. Vide the said Order, SEBI had *inter alia* directed MIRL and its directors to refund the money to investors and had further prohibited MIRL and its directors from buying, selling or dealing in the securities market, in any manner whatsoever, for a period of four years from the date of completion of repayment process. The Noticee is one of such directors of MIRL.

   ii. Regulation 11A(5)(i)(d) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (**SB Regulations**) provided that one of the eligibility criteria for registration as a sub-broker, in case of an individual, shall be that the applicant should be a fit and proper person. Further, Regulation 27(iv) of the SB Regulations *inter alia* provides that a sub-broker shall be liable for any action as specified in Chapter V of the SEBI (Intermediaries) Regulations, 2008 (**Intermediaries Regulations**) including suspension or cancellation of his certificate of

registration, if he, *inter alia*, has been found to be not a fit and proper person by SEBI under SB Regulations or any other Regulations. Similarly, the provisions of Regulation 9(1)(c) & (e) of the Intermediaries Regulation provides that any certificate granted by SEBI to an intermediary shall be subject to *inter alia* the conditions that (i) the intermediary shall abide by the provisions of the securities laws and the directions, guidelines and circulars as may be issued thereunder; and (ii) he shall meet the eligibility criteria and other requirements specified in Intermediaries Regulations and the relevant regulations. Further, the Schedule II read with Regulation 7 of the Intermediaries Regulations provides that for the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person', SEBI 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:

(a) integrity, reputation and character;
(b) absence of conviction and restraint orders;
(c) competence including financial solvency and net worth.

iii. In view of the abovementioned SEBI Order against the Noticee in the matter of MIRL and the abovementioned legal provisions, SEBI initiated enquiry proceedings against the Noticee for alleged violation of the provisions of Regulations 11A(5)(i)(d) and 27(iv) of the SB Regulations and Regulation 9(1)(c)&(e) and Schedule II read with Regulation 7 of the Intermediaries Regulations, for failing to fulfill the continuous eligibility criteria of being a fit and proper person, for holding a certificate of registration as sub-broker from SEBI.

iv. The Designated Authority (**DA**), upon a consideration of the facts before him and after granting an opportunity of hearing, found the Noticee to be in violation of the abovementioned provisions of the SB Regulations and the Intermediaries Regulations. Accordingly, the DA, under Regulation 23 of the Intermediaries Regulations, recommended that the certificate of registration of the Noticee as a sub-broker may be cancelled for the aforesaid violations.

v. A Show Cause Notice dated November 12, 2018 (**post–enquiry SCN**) under Regulation 28(1) of the Intermediaries Regulations was issued by SEBI calling upon the Noticee to show cause as to why action as recommended by the DA or any other penalty, as deemed fit by the Competent Authority, should not be imposed on him.

REPLY AND PERSONAL HEARING –

3. Pursuant to receipt of post–enquiry SCN, the Noticee submitted its reply vide an undated letter received on November 20, 2018 whereby he submitted inter alia the following:

   (a) He joined as director of MIRL on 06.12.2010 and resigned on 17.10.2011 as the company issued NCDs without his knowledge.

   (b) He was a sub-broker of India Infoline Limited just for a period of 6 to 7 months, as the business was not profitable. Since 2011, he is not dealing in any securities.

   (c) Since he was not dealing in the securities business and had no intention to continue, he submitted application for surrender of registration as a sub-broker long back. Later the order of SEBI was passed in the matter of MIRL.

   (d) The Noticee requests that his application for surrender of registration as a sub-broker may be accepted.

4. An opportunity of personal hearing was granted to the Noticee by scheduling the same on September 11, 2019. However, the Noticee failed to attend the said hearing.

FINDINGS –

5. I have considered the DA Report along with the reply submitted by the Noticee and all the relevant material on record.

6. I note from the abovementioned SEBI Order in the matter of MIRL that MIRL was involved in illegal fund mobilization from public through issuance of NCDs and that the Noticee was a director in the said company at the time of said issuance. As such, I find that the Noticee's integrity and reputation has come into question. I further note that the abovementioned SEBI Order has debarred the Noticee from the securities market for a period of 4 years after the completion of refund to investors, as directed therein. It is pertinent to note that as per the provisions of Schedule II of the Intermediaries Regulations, integrity, reputation and character as well as absence of convictions and restraint orders are some of the guiding criteria for deciding whether a person is a fit and proper person or not. In the instant case, the Noticee has submitted that he was not aware of the fund raising activities of the company. However, I note from records

that he has not raised this contention before SEBI at any time during the proceedings in the matter of MIRL, as he had failed to respond to SEBI's allegations. Thus, I find that the Noticee cannot absolve himself of the violations found to have been committed by him in the matter of MIRL. Further, I note that the Noticee in his reply has not submitted details of steps, if any, taken by him for refund of money to investors, as directed in the abovementioned SEBI Order. Considering the serious violations established against the Noticee and his subsequent conduct as regards refund to investors, I note that the Noticee has rendered himself as a person who is not a 'fit and proper person', as defined under Schedule II of the Intermediaries Regulation read with Regulation 5A of the SB Regulations, thereby violating the eligibility criteria which he is continuously required to fulfil under Regulation 11A(5)(i)(d) of the SB Regulations, in order to continue to hold a certificate of registration as a sub-broker. The same has also rendered him liable, under Regulation 27(iv) of the SB Regulations, for action under Chapter V of the Intermediaries Regulations. I note that the Noticee has not defended his case on merit and has, in fact, requested SEBI to cancel his certificate of registration.

7. Having regard to the facts and circumstances of the instant proceedings, I am inclined to accept the aforementioned recommendation of the DA.

ORDER –

8. I, in exercise of the powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act, 1992 read with Regulation 28(2) of the Intermediaries Regulations, hereby cancel the certificate(s) of registration issued to the Noticee as a sub-broker, with immediate effect

9. A copy of this Order shall be served on the concerned Stock Exchanges, the Depositories and the concerned Stock Broker for their information.

Place: Mumbai
Date: October 04, 2019

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