

SECURITIES AND EXCHANGE BOARD OF INDIA

INTERIM ORDER CUM SHOW CAUSE NOTICE

Under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 read with Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In respect of:

NOTICEE	REGISTRATION NO.
First Overseas Capital Limited	INM000003671

Background

1. Securities and Exchange Board of India (“SEBI”) carried out an inspection of First Overseas Capital Limited (“FOCL” / “MB” / “the Company” / “Noticee”), a SEBI registered Merchant Banker, on August 24 and 25, 2022. The period of inspection was from April 01, 2021 to March 31, 2022. During the course of inspection, it was, *inter-alia*, found that the MB had failed to maintain the required capital adequacy (net worth of Rs. 5 Crore) at all times, in terms of Regulation 7 read with Regulation 9A (1) (d) of SEBI (Merchant Bankers) Regulations, 1992 (“MB Regulations, 1992”). Based on the findings of the inspection and the MB’s response, enquiry proceedings were initiated against the MB under Regulation 35 of the MB Regulations, 1992 read with Regulation 23 under Chapter V of SEBI (Intermediaries) Regulations, 2008 (“Intermediaries Regulations, 2008”), which are ongoing.
2. Subsequent to the aforesaid inspection, another inspection was undertaken by SEBI on February 14 and 15, 2024, for the period from April 01, 2022 to October 31, 2023. During the course of the inspection, it was found that the MB had still not complied with capital adequacy requirement (net worth of Rs. 5 Crore) in terms of Regulation 7 read with Regulation 9A (1) (d) of the MB Regulations,

1992. The details of the findings of the inspection are provided in the following paragraphs.

Non-maintenance of adequate Net Worth

3. From the submissions in the pre-inspection questionnaire(s) (PIQ) provided by the MB prior to conducting the inspection on both the occasions, it was observed that the net worth of the MB was less than Rs. 5 Crore from Financial Year (FY) ended March 31, 2019 onwards. The details are provided below:

Financial Year	Net-worth as submitted by the MB (In Rs.)
2018-19	3,39,81,005
2019-20	1,91,83,465
2020-21	2,31,22,673
2021-22	1,91,83,465

4. As regards the net worth for FY ended March 31, 2023, in the PIQ dated January 19, 2024 as well as in an email dated January 25, 2024, the MB expressed its inability to submit its last balance sheet and the net worth certificate by stating that its auditor was on long leave due to the auditor's wife's illness.
5. Before the start of SEBI inspection in February 2024, the MB, vide email dated February 08, 2024, submitted net worth certificates dated February 06, 2024 and February 07, 2024 for the period ended March 31, 2023 and September 30, 2023, respectively. The net worth certificates were provided by an independent chartered accountancy firm, namely, Bhatler & Company, Chartered Accountants, Mumbai. The details of net worth as on March 31, 2023 and September 30, 2023, as stated in the said certificates, were as under:

Particulars	As on March 31, 2023	As on September 30, 2023
Paid up Equity share Capital (A)	16,95,00,000	16,95,00,000
Less: Accumulated losses (B)	10,54,75,028	9,63,50,368
Net Worth (C = A - B)	6,40,24,972	7,31,49,632

6. Vide email dated February 08, 2024, the MB had also submitted audited financials for FY ended March 31, 2023 and unaudited financials for the period ended September 30, 2023. As per net worth certificates submitted by the MB, as referred to in the previous paragraph, the MB's net worth for FY ended March 31, 2023 was Rs. 6,40,24,972/-. However, from the MB's Statutory Auditor's

Report dated January 19, 2024, it was noted that the Statutory Auditor had provided a qualified opinion with respect to a transaction amounting to Rs. 3 Crore entered between the MB and one Mr. Rajesh Mewawalla by treating the same as a time barred unsecured and doubtful loan/advance made by the MB for which no provision was made.

7. In view of the above, the net worth of the MB, as on March 31, 2023, after adjusting for non-provision of Rs. 3 Crore for time barred unsecured and doubtful loan / advance was required to be restated at Rs. 3,40,24,972, which was less than the minimum prescribed net worth of Rs. 5 Crore. Considering the non-provision of Rs. 3 Crore for time barred unsecured and doubtful loan / advance, the restated net worth of the MB as on September 30, 2023, also would come to Rs. 4,31,49,632 (i.e., Rs. 7,31,49,632 - Rs. 3,00,00,000), which was less than the minimum prescribed net worth of Rs. 5 Crore.
8. The MB, in its reply vide letter dated April 30, 2024, contended that the doubtful debt of Rs. 3 Crore arose from an unsecured loan provided to Mr. Rajesh Mewawalla, which was a fraud played on the MB for which an FIR had been lodged against Mr. Rajesh Mewawalla. The MB further contended that it believed that the said amount of Rs. 3 Crores would be recovered. The MB further stated in its reply that after the date of signing the balance sheet, it received balance confirmation for loan amount due and the entity had agreed to pay the same. Accordingly, the loan was not treated as doubtful of recovery. In support of its statement, the MB submitted a letter dated October 16, 2023 signed by Mr. Rajesh Mewawalla, whereby he agreed to pay his outstanding dues by June 24, 2025.
9. From the documents available on record, it was noted that the Balance Sheet was signed by the management of the MB and the Statutory Auditor on January 19, 2024 whereas the letter received from Mr. Rajesh Mewawalla was dated October 16, 2023. Hence, the submission of the MB that it received confirmation letter from Mr. Mewawalla after the date of signing the balance sheet (i.e., January 19, 2024) appeared false and misleading.

10. SEBI, vide email dated May 22, 2024 asked the Statutory Auditor, Mr. Ganesh Mehta (Membership No. 032939), to confirm whether the aforesaid letter dated October 16, 2023 was provided to him and whether the same was considered by him before signing the audit report of the MB on January 19, 2024. In response, vide letter dated May 23, 2024, the Statutory Auditor, *inter-alia*, submitted that – ***“We have not been provided with the confirmation letter dated 16.10.2023 during the course of our audit and thereafter by the time the accounts were signed, i.e., on 19.01.2024...”***
11. As per the audit procedure laid down in ‘Guidance Note on Audit of Debtors, Loans and Advances’ issued by the ICAI, an auditor should obtain from the management of an entity, a written statement regarding recoverability of loans and advances and their classification for balance sheet purposes. The amount for which a contingency is created in the financial statements is based on the information which is available as on the date on which the financial statements are approved. However, in this case, the MB did not present the letter dated October 16, 2023, till the audit report was signed on January 19, 2024. Considering the same, the claim of the MB that the said loan amount of Rs. 3 Crore was not doubtful for recovery is untenable, especially when the debt remained unpaid even after an FIR was filed against the borrower, Mr. Rajesh Mewawalla, and he was remanded to police custody in the year 2022.
12. Further, on perusal of a copy of the letter dated October 16, 2023, submitted by the MB, it was noted that the same was on the letterhead of a firm named Fountain Fruit Dry Stores on which its proprietor, Mr. Rajesh Mewawalla, had signed. The authenticity of the letter could not be ascertained. Besides, the same being merely a letter, it lacked features of a legally binding document which could provide a ground for legal recourse in case of disputes or breaches on account of default on loan payment.
13. From the above, it was apparent that the MB’s financial statements contained material mis-statements.

14. In addition to the above, the auditor had also expressed a qualified opinion for not making provision for diminution in value of 1,40,000 shares of Nidan Laboratories & Healthcare Limited (“Nidan”) held by FOCL, amounting to Rs.1,28,52,000/-, in FY 2021-22.

15. Taking into consideration the abovementioned *prima facie* findings, the net-worth of the MB as on March 31, 2022, March 31, 2023, and September 30, 2023, after taking into account the provisioning for the loan of Rs. 3 Crore and the diminution in value of shares of Nidan, are provided in the table below:

Particulars	As on March 31, 2022 (Rs.)	As on March 31, 2023 (Rs.)	As on September 30, 2023 (Rs.)
Reported Net Worth (A)	13,92,170	6,40,24,972	7,31,49,632
Less: Provision for doubtful debts (B)	3,00,00,000	3,00,00,000	3,00,00,000
Less: Provision for diminution in value of investments (C)	1,28,50,000	-	-
Net Worth (D = A - B - C)	(4,14,57,830)	3,40,24,972	4,31,49,632

16. The aforementioned calculation of net worth amount by making provision for doubtful debts of Rs. 3 Crore is in line with the accounting principles governing impairment of financial assets such as impairment of receivables (commonly known as provision for bad and doubtful debts). As per para 4 of the Accounting Standards (AS) 4 on “Contingencies and Events occurring after the Balance Sheet Date”, adjustments to assets and / or liabilities are required to be made if an event provides/relates to additional information to the conditions existing at the balance sheet date and is also materially affecting the valuation of assets and liabilities as on the balance sheet date.

17. Similarly, the non-provisioning for diminution in value of 1,40,000 shares of Nidan for Rs. 1,28,50,000/- was non-compliant with para 31 of the AS-13, which provides that Investments classified as current investments should be carried in the financial statements at the lower of cost and fair value determined either on an individual investment basis or by category of investment.

18. As the net worth of the MB was found to be below the threshold limit of Rs. 5 Crore for more than 5 consecutive years, i.e., from FY 2018-19 till the period ended September 30, 2023, the MB is *prima facie* found to have violated the

provisions of Regulation 7 read with Regulation 9A(1)(d) of the MB Regulations, 1992. The said provisions read as under:

“Capital adequacy requirement.

7. The capital adequacy requirement referred to in clause (d) of regulation 6 shall be a net worth of not less than five crore rupees.

Conditions of registration.

9A. (1) Registration granted under regulation 8] shall be subject to the following conditions, namely: -

(a)....

(d) it shall maintain capital adequacy requirements specified in regulation 7 at all times...”

Indulging in business other than that of the securities market

19. As per Regulation 13A of the MB Regulations, 1992, a merchant banker is prohibited from carrying out any business other than that in the securities market. The said provisions from the MB Regulations, 1992 read as under:

“Merchant banker not to associate with any business other than that of the securities market.

13A. No merchant banker, other than a Bank or a Public Financial Institution, who has been granted a certificate of registration under these regulations shall after June 30, 1998 carry on any business other than that in the securities market.”

20. It was observed that the MB had raised an amount of Rs. 7.50 Crore through issue of preference shares during FY23. The audit report of the MB for FY 2022-23 under the section ***“Emphasis of Matter”*** mentioned that the MB had utilized the said amount for making an advance towards construction project to two companies on certain terms and conditions and had neither obtained SEBI's permission nor changed or amended the main clause of its Memorandum of Association so as to carry out the business of joint development of property. In this regard, upon seeking explanation, the MB, vide email dated June 06, 2024 submitted, *inter alia*, that the said amount of Rs.7.50 Crore was not utilized as an advance towards a construction project but was given as loan to the

companies viz., Boisar Realty Pvt. Ltd. ("**Boisar Realty**") and Falcon Recreational Activities Pvt. Ltd. ("**Falcon**"). The MB denied that it utilized the funds for carrying any business other than in the securities market. In support of its claim, the MB submitted loan confirmations from the said two companies which showed that the MB had given advances of Rs. 3.50 Crore each to these two entities.

21. Vide email dated June 07, 2024, the Statutory Auditor of MB, Mr. Ganesh Mehta, was advised to confirm whether the aforesaid loan confirmations were provided to him and whether the same was considered by him before signing the audit report of the MB on January 19, 2024. The Statutory Auditor vide letter dated June 07, 2024, *inter-alia*, submitted that the MB had advanced Rs. 3.50 Crore to each of the abovementioned two companies during the FY 2022-23. The Statutory Auditor further stated that during the audit period, the management of MB had furnished written confirmations of both the parties affirming that the advanced amount was intended towards a joint development project for the acquisition of land. Based on the aforesaid written confirmations, the auditor had formed his opinion that the MB had entered into said transaction. The statutory auditor also submitted confirmation letters received by the MB from the two companies and the letters of MB expressing interest to invest amount towards joint development to acquire a land parcel in Boisar.
22. It was observed that the letters sent to or received from both the aforesaid companies had, more or less, the same contents. For instance, letter dated July 05, 2022 sent by Boisar Realty to the MB mentioned the following:

"As per discussion and interest shown by you in joint development of project, please note that we have more than 30 acres of land in Boisar which consists of 9 sectors out of which 4 has been already developed and other 5 are still to be developed. We have the NA Order and ZP Building Permission for the property. We invite you visit our site in Boisar for discussion in investment on joint development of the said property in order to take further decisions we do not mind sharing with you our property details on receipt of your confirmation. Once the said investment is received by you in our company we will draw up a fresh Investment Joint Venture Agreement which will supersede all other agreements or correspondence."

23. In response, the MB vide letter dated August 02, 2022, expressed interest to make investments towards joint development to acquire a land parcel in Boisar. In the said letter of the MB, the following was mentioned:

“As per our ongoing discussion, telephonic talks and meeting with you. We are interested in investing a sum of Rs. 3,50,00,000/- towards a joint development to acquire the land parcel shown to us in Boisar. As per the talks carried out please note that if you are not able to acquire the land parcel shown to us in Boisar within a period of 18 months then the said money will be returned by you. If the said period extends more than 18 months then the interest will be levied @ 18% per annum on the money invested by us. However, the money will be returned by you within a period of 2 years with no extensions thereafter. We will be legally allowed to pursue a recovery suit against you. Once the land is acquired we will get into a formal MOU thru joint venture which will rescind all the previous communication and the said MOU will be binding on both of us. With good faith the funds will be transferred to the bank account details to be informed by you, in instalments in the next 2 weeks.”

24. It was observed that on one hand, the MB vide email dated June 06, 2024, had claimed that Rs. 7 Crore (Rs. 3.50 Crore each to two entities) was not utilized as an advance towards a construction project but was given as a loan to the aforesaid two companies, on the other hand, the MB had issued letters to the two companies expressing interest in investing a sum of Rs. 3.50 Crore each towards a joint development to acquire a land parcel at Boisar. The MB had denied that it had utilized the funds for carrying any business other than in the securities market. In view of the above, it is apparent that the MB had knowingly submitted false and misleading statement to SEBI.
25. While taking into account the abovementioned aspect of MB's investment in property development business, the break-up of net-worth of the MB as on March 31, 2022 and March 31, 2023, by considering various figures provided in annual report for FY 2022-23, would be as tabulated below:

Particulars	As on March 31, 2022 (In Rs.)	As on March 31, 2023 (In Rs.)
Equity Share Capital (A)	9,45,00,000	9,45,00,000
2% Compulsory Convertible Non-cumulative Preference Share Capital (B)	-	7,50,00,000
Reserves & Surplus (D)	(9,31,07,830)	(10,54,75,030)
Net Worth as reported in the audited financial statements of MB (E = C + D)	13,92,170	6,40,24,972
Less: Provision for doubtful debts (F)	3,00,00,000	3,00,00,000
Less: Provision for diminution in value of investments (G)	1,28,50,000	-
Actual Net Worth (H = E - F - G)	(4,14,57,830)	3,40,24,972

26. From the above table, it was seen that the net worth of MB as per audited financial statements increased from Rs. 13,92,170 as on March 31, 2022 to Rs.6,40,24,970 as on March 31, 2023. This increase was mainly on account of infusion of preference share capital amounting to Rs. 7.50 Crore. It was noted that Mr. Satyen Dalal, the Chairman & Managing Director of FOCL and its holding company [M/s Chasam Investments & Leasing Pvt. Ltd. ("**Chasam**")], had infused Rs. 4 Crore whereas Chasam had infused the balance amount of Rs. 3.50 Crore through issue of preference shares. Thus, Rs. 7.50 Crore infused into the Company as preference share capital effectively belonged to Mr. Satyen Dalal and Chasam, out of which Rs. 7 Crore was transferred to two companies, viz., Boisar Realty and Falcon, for joint development of property in Boisar which had no relation to the securities market.

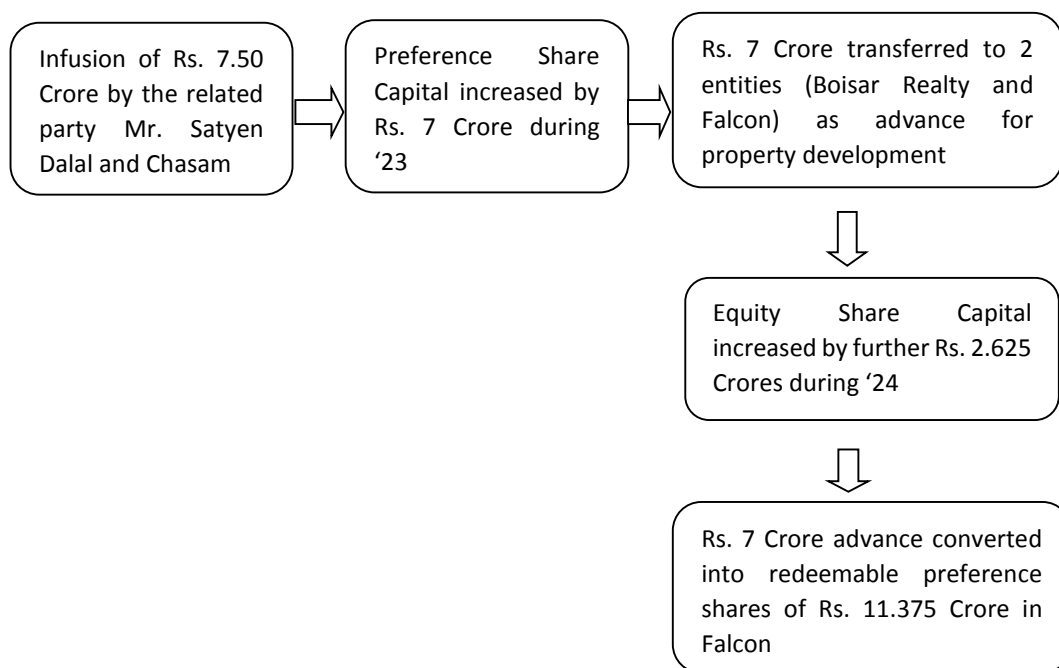
27. The breakup of net-worth of the MB as on March 31, 2023 and March 31, 2024 as seen from the financial statements submitted by the MB on July 10, 2024, is tabulated below:

Particulars	As on March 31, 2023	As on March 31, 2024
Equity Share Capital (A)	9,45,00,000	9,45,00,000
Increase in Equity Share Capital (B)	-	2,62,50,000
2% Compulsory Convertible Non-cumulative Preference Share Capital (C)	7,50,00,000	7,50,00,000
Reserves & Surplus (E)	(10,54,75,028)	(9,94,25,979)
Net Worth as reported in the audited financial statements of MB (F = D + E)	6,40,24,972	9,63,24,021
Less: Provision for doubtful debts (G)	3,00,00,000	- *
Less: Provision for diminution in value of investments (H)	-	-
Actual Net Worth (I = F - G - H)	3,40,24,972	9,63,24,021

* - The MB has made full provision for doubtful debts amounting to Rs. 3 Crore.

28. From the above table, it was noted that the net worth of MB as per audited financial statements increased from Rs. 6,40,24,972 as on March 31, 2023 to Rs. 9,63,24,021 as on March 31, 2024. The said increase was mainly on account of infusion of equity share capital amounting to Rs. 2,62,50,000.
29. From the financial statements of the MB for the FY ended March 31, 2024, it was noted that the advance towards construction project amounting to Rs. 7 Crore referred to above was converted into redeemable preference shares issued by Falcon amounting to Rs. 11,37,50,000.
30. From the MCA website, it was noted that Boisar Realty and Falcon had common address (102, Shivkala Arcade, Above Kotak Mahindra Bank, Boisar Tarapur Rd, Boisar (W), Mumbai Thane Maharashtra, India 401501) and common directors, viz., Mr. Sachin Harishchandra Gavhane, Ms. Sonia Vishal Sankhe and Mr. Vishal Dilip Sankhe. It was further noted that Falcon was incorporated on October 19, 2022.
31. The latest financial statements of Falcon as available on MCA website, was for FY ended March 31, 2023. From the same, it was noted that Falcon had NIL revenues whereas its expenditure for the year was Rs. 19,10,000 which comprised of stamp duty of Rs. 19 Lakh and audit fees of Rs. 10,000. Resultantly, the net loss for the year was Rs. 19,10,000. From the financial statements, it was further noted that Falcon received a loan of Rs. 3.50 Crore from FOCL, which was shown as short term borrowings from FOCL. As the latest financial statements of Boisar Realty and Falcon for FY ended March 31, 2024 were not available, as on date, the capital structure and accounting made to accommodate the recent transactions could not be ascertained.
32. It appeared that the funding of Rs. 7.50 Crore through issue of preference share capital and Rs. 2,62,50,000 through issue of equity share capital into the MB, i.e., FOCL, were not meant to increase the net worth of the MB beyond the required threshold limit of Rs. 5 Crores but to make investment in property development business. MB was merely used as a pass through investment vehicle to camouflage the actual transactions, i.e., advancing funds to two

entities (i.e., Boisar Realty and Falcon) and subsequently converting the same into redeemable preference shares of one entity, i.e., Falcon. In the process, the paid up capital of FOCL increased enabling it to increase its net worth. A pictorial representation depicting the above transactions is given below:



33. The MB's investment in a business unrelated to the securities market left it with inadequate financial resources, on account of lower net worth, to enable it to fulfil its underwriting obligations devolved on it. This was reflected from Note 5 in notes to accounts section forming part of the audited financials of the MB for FY 2022-23, which read as under:

"Note: Amount of Rs. 7,41,00,000/- received from various parties as earnest money deposits towards subscribing of shares by the company in the IPO of Nidaan Laboratories Ltd., as the company had to undergo hard underwriting of the IPO towards the devolvement of the issue during FY 2021-22..."

34. It was found that the MB resorted to obtaining public deposits in order to subscribe to the shares of Nidaan pursuant to its underwriting obligations. Had the MB not invested Rs. 7 Crore in property development business, it would have possessed adequate financial resources to meet its hard underwriting obligations and the requirement to raise public deposits could have been

avoided. The details of public deposits raised by the MB are discussed later in this order.

35. As the MB had knowingly and willingly made investment in property development business which was beyond the realm of permitted business activities of a merchant banker, the MB is alleged to have violated the provisions of Regulation 13A of the MB Regulations, 1992.
36. As stated earlier, SEBI has prescribed capital adequacy requirements to ensure that a merchant banker has access to sufficient funds at its disposal to meet its obligations in relation to securities market business. In this case, the MB has channelized funds into property development business which has no relation to the securities market. Considering the same, it is imperative to exclude the preference share capital, which was used for making investment into property development business, from the calculation of net worth of the MB available for its securities market business. Accordingly, the net worth for FY ended March 31, 2023 and March 31, 2024, after netting of the preference share capital which was actually meant for investment in property development business, is tabulated as under:

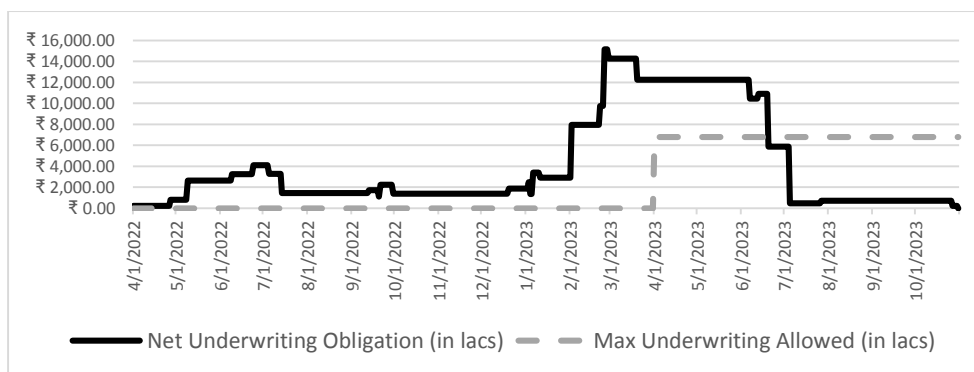
Particulars	As on March 31, 2023 (Rs.)	As on March 31, 2024 (Rs.)
Equity Share Capital (A)	9,45,00,000	12,07,50,000
2% Compulsory Convertible Non-cumulative Preference Share Capital (B)	7,50,00,000	7,50,00,000
Reserves & Surplus (D)	(10,54,75,028)	(9,94,25,979)
Net Worth reported in the audited financial statements of MB (E = C + D)	6,40,24,972	9,63,24,021
Less: Provision for doubtful debts (F)	3,00,00,000	-
Less: Provision for diminution in value of investments (G)	-	-
Actual Net Worth before adjustment (H = E – F – G)	3,40,24,972	9,63,24,021
Less: Preference Share Capital (I)	7,50,00,000	7,50,00,000
Actual Net Worth after adjustment (J = H – I)	(4,09,75,028)	2,13,24,021

37. Although the MB attempted to technically meet the net worth requirement as on March 31, 2024, the actual net worth of the MB as available for its securities market business / obligations was less than the threshold limit of Rs. 5 Crore. The MB was used as a pass-through investment vehicle for channelizing the

funds of Mr. Satyen Dalal and Chasam (the holding company of MB) into property development business, i.e., carrying out business other than that in the securities market. As a consequence, the net-worth of the MB continued to be below the minimum prescribed limit of Rs. 5 Crore for six consecutive years beginning from the year 2018-19 leading to non-compliance with Regulation 7 read with Regulation 9A (1) (d) of the MB Regulations, 1992.

Underwriting Obligations and accepting public deposits for funding

38. The underwriters are engaged by a company coming out with an issue of securities to cover under-subscription. There is a risk of an issue falling if the company does not receive the minimum subscription as prescribed. To avoid such a situation, a company engages the services of underwriters. The underwriters agree, for a fee, to subscribe to the shares in case of under subscription to ensure that the minimum subscription is achieved. As underwriting involves financial risk, it is imperative for an underwriter to have adequate net worth to acquire shares in case of devolvment. Underwriters with lower net worth stand a risk of defaulting on the legally binding obligation to acquire the unsubscribed shares pursuant to the underwriting agreement, in case of under-subscription.
39. As per Regulation 22B (2) of the MB Regulations, 1992, at any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker.
40. Upon analysis of the data submitted by the MB with respect to the underwriting obligations of the issues that were open during the inspection period, it was observed that during FY 2021-22 and FY 2022-23, the MB had underwritten issues of securities beyond the prescribed limits, i.e., 20 times of the reported net worth, calculated by taking into account the provision for doubtful debts of Rs. 3 Crore, in a routine manner. A graphical representation depicting the same is as under:



41. The underlying data for the above chart is as under:

Date	Underwriting Obligation (Rs. in Lacs)	Net Underwriting Obligation (Rs. in Lacs)	Comments	Net Worth (as at end of previous FY) (Rs. in lacs) *	Max Underwriting Allowed (Rs. in lacs)
01/04/2022	218.00	218.00	Nanavati Ventures Ltd.	-414.58	0.00
27/04/2022	-218.00	810.00	Nanavati Ventures Ltd.	-414.58	0.00
	810.00		Veerkrupa Jewellers Ltd.		
09/05/2022	1,824.00	2,634.00	Ishan International Ltd.	-414.58	0.00
09/06/2022	610.00	3,244.00	Varanium Cloud Ltd.	-414.58	0.00
24/06/2022	853.05	4,097.05	QMS Medical Allied Services	-414.58	0.00
05/07/2022	-810.00	3,287.05	Veerkrupa Jewellers Ltd.	-414.58	0.00
14/07/2022	-1,824.00	1,463.05	Ishan International Ltd.	-414.58	0.00
13/09/2022	276.00	1,739.05	Amanaya Ventures Ltd.	-414.58	0.00
20/09/2022	-610.00	1,129.05	Varanium Cloud Ltd.	-414.58	0.00
21/09/2022	1,124.40	2,253.45	SVS Ventures Ltd.	-414.58	0.00
30/09/2022	-853.05	1,400.40	QMS Medical Allied Services	-414.58	0.00
20/12/2022	472.99	1,873.39	Ducol Organics And Colours Ltd.	-414.58	0.00
03/01/2023	612.36	2,485.75	SVJ Enterprises Ltd.	-414.58	0.00
04/01/2023	-1,124.40	1,361.35	SVS Ventures Ltd.	-414.58	0.00
06/01/2023	2,030.29	3,391.64	Nirman Agri Genetics Ltd.	-414.58	0.00
11/01/2023	-472.99	2,918.65	Ducol Organics And Colours Ltd.	-414.58	0.00
02/02/2023	5,034.00	7,952.65	Cellpoint India Ltd.	-414.58	0.00
22/02/2023	1,800.00	9,752.65	Kore Digital Ltd.	-414.58	0.00
25/02/2023	5,403.60	15,156.25	Synoptics Technologies Ltd.	-414.58	0.00

Date	Underwriting Obligation (Rs. in Lacs)	Net Underwriting Obligation (Rs. in Lacs)	Comments	Net Worth (as at end of previous FY) (Rs. in lacs) *	Max Underwriting Allowed (Rs. in lacs)
28/02/2023	-612.36	14,267.89	SVJ Enterprises Ltd.	-414.58	0.00
	-276.00		Amanaya Ventures Ltd.		
20/03/2023	-2,030.29	12,237.60	Nirman Agri Genics Ltd.	-414.58	0.00
07/06/2023	-1,800.00	10,437.60	Kore Digital Ltd.	340.25	6,804.99
13/06/2023	468.00	10,905.60	Ondoor Concepts Ltd.	340.25	6,804.99
20/06/2023	-5,034.00	5,871.60	Cellpoint India Ltd.	340.25	6,804.99
05/07/2023	-5,403.60	468.00	Synoptics Technologies Ltd.	340.25	6,804.99
27/07/2023	241.33	709.33	Shanthala FMCG Products Ltd.	340.25	6,804.99
27/10/2023	-468.00	241.33	Ondoor Concepts Ltd.	340.25	6,804.99
31/10/2023	-241.33	0.00	Shanthala FMCG Products Ltd.	340.25	6,804.99

Note: * - Net worth is calculated after adjusting for provision for doubtful debts.

42. In this regard, the MB submitted that in order to sustain difficult times during Covid-19, it had undertaken different assignments for managing the IPOs of various SME companies. The MB further submitted that when it took the assignments, it was of the view that such SME issues were sound and there would not be any liability on account of devolvement. However, due to market conditions, some of the IPOs managed by it were not fully subscribed and thus devolved on the MB and it had to subscribe to the same as per obligation. The MB admitted that it had underwritten beyond the prescribed limits, as per its own calculations, in few instances. However, SEBI's inspection team found that the limit had been breached in many instances. It was found that the calculations of net-worth as provided by the MB for many instances were inaccurate and the maximum permissible underwriting limits were arrived by calculating net-worth without making provision for doubtful debts of Rs. 3 Crore for FY 2021-22 and 2022-23 and diminution in value of 1,40,000 shares of Nidan held by FOCL, amounting to Rs. 1,28,52,000, in FY 2021-22.
43. The MB contended that the inspection team had considered the devolved amount twice, viz., on the date of issue and on the date of closing. However, it

is pertinent to mention that the underwriting obligations, which are in force for an issue, are considered first on the date of signing of underwriting agreement and second, on the date of issue closure. The figures mentioned against the date of entering into underwriting agreements account for the increase in underwriting obligation incurred by the MB. The figures mentioned against the dates of issue closure are negative figures indicating reduction of underwriting obligation for arriving at the net underwriting obligation of the MB on any particular date. Thus, these negative entries are required since the underwriting obligation associated with each issue is extinguished with the closure of the issue (*refer to Table under Para 41 above*).

44. From the audit report of the MB for FY 2022-23 under the section “*Emphasis of Matter*”, it was noted that the statutory auditor had opined that the MB had accepted deposits from the public to fulfill its underwriting obligations to the public issues aggregating to Rs. 10.30 Crore, in contravention of Section 73 to 76 of the Companies Act, 2013, and rules made thereunder. Further, it was mentioned that, at the end of the year, the Company was still holding unsecured loan of Rs. 5.41 Crore, in contravention of Section 73 to 76 of the Companies Act, 2013.
45. In this regard, vide email dated May 26, 2024, the Statutory Auditor, Mr. Ganesh Mehta, was asked to provide the documents maintained by him in support of his abovementioned opinion. The Statutory Auditor, vide letter dated June 01, 2024, submitted the details of public deposits aggregating to Rs. 10.30 Crore and amount of Rs. 5.41 Crore outstanding at the end of the year. He further submitted that the MB had accepted interest free deposits amounting to Rs.10.30 Crores to fulfil its underwriting obligations and that the person / parties from whom the money was received were neither members, directors nor relatives of directors of the MB. Accordingly, the Statutory Auditor had formed an opinion that such amounts received by the MB were in violation of Section 73 to 76 of the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014.

46. Upon seeking explanation from the MB on the matter, it submitted that the monies were not received as public deposits but were rather unsecured loans taken to bridge the losses in its books and to maintain its net worth and were not utilized for acquisition of securities. The explanation of the MB that it had obtained “*unsecured loans*” to maintain its net worth appeared irrational since borrowings would increase the liabilities on one side and corresponding increase in the assets on the other side. Thus, the public deposits cannot be said to have any effect either on the equity or the reserves and surplus which together constitute the net worth.
47. As already stated in paras 33-37 above, the MB did not possess adequate financial resources, on account of lower net worth, to acquire securities in respect of the underwriting obligations it had incurred. Instead, the MB resorted to the practice of obtaining public deposits in order to subscribe to the shares of Nidaan. Such acts pose a significant risk to the sustainability of a public issue and as a consequence, may lead to default by the MB to meet its binding underwriting obligations and the failure of the underwritten issue process.
48. The aforesaid acts of underwriting beyond the prescribed limits, i.e., 20 times of the net worth by the MB, are *prima facie* found to be in violation of the provisions of Regulation 22B (2) of the MB Regulations, 1992. Further, the MB is also found to have violated the provisions of Para 2.3.3 under Chapter-I of the SEBI Master Circular SEBI/HO/CFD/PoD-1/P/CIR/2023/157 dated September 26, 2023 and Clause 21 of Schedule III read with Regulation 13 of the MB Regulations, 1992 on account of deployment of borrowed funds to acquire securities on account of devolvement pursuant to its underwriting obligations.
49. The aforementioned provisions read as under:
- MB Regulations, 1992***
- “Code of conduct.***
- 13. Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.***

SCHEDULE III

CODE OF CONDUCT FOR MERCHANT BANKERS

1.....

21. A merchant banker shallabide by the provisions of the Act, regulations made thereunder, circulars and guidelines, which may be applicable and relevant to the activities carried on by it.....

General responsibilities of a merchant banker as an underwriter.

22B. (1)....

(2) At any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker.

SEBI Master Circular dated September 26, 2023

2.3.3 A merchant banker is not allowed to borrow funds from the market and engage in the acquisition and sale of securities.

Submission of false and misleading information

50. It was observed that the MB submitted false and misleading information to SEBI at various instances. The details of the same are provided below.

Instance 1: Availability of the Statutory Auditor

51. In the PIQ dated January 19, 2024, the MB had expressed its inability to submit its last balance sheet and the net worth certificate by stating that its auditor was on long leave due to his wife's illness. The MB had reiterated the said submission vide its email dated January 25, 2024. However, from the audited financial statements for the period ended March 31, 2023, submitted by the MB vide email dated February 08, 2024, it was noted that the said financials were signed by the Statutory Auditor (Ganesh & Rajendra Associates, Chartered Accountants FRN No. 103055W) on January 19, 2024 itself. It showed that the MB had knowingly submitted false and misleading statement to SEBI.

Instance 2: Letter received from Mr. Rajesh Mewawalla

52. The MB, in its reply vide letter dated April 30, 2024, contended that the doubtful debt of Rs. 3 Crore arose from an unsecured loan provided to Mr. Rajesh Mewawalla, which was a fraud was played on the MB, for which an FIR was lodged against Mr. Rajesh Mewawalla. The MB submitted that it believed that

the said amount of Rs. 3 Crore would be recovered. The MB further stated in its reply that after the date of signing the balance sheet, it received balance confirmation for loan amount due and the entity had agreed to pay the same and hence, the loan was not doubtful of recovery. In support of its statement, the MB submitted a letter dated October 16, 2023 signed by Mr. Rajesh Mewawalla whereby he agreed to pay the debts by June 24, 2025.

53. From the documents available on record, it was noted that the Balance Sheet of MB for FY ended March 31, 2023 was signed by the management of the MB and the Statutory Auditor on January 19, 2024. Since the confirmation letter was dated October 16, 2023 which was prior to the date of signing of the audited financial statements (i.e., January 19, 2024), it was apparent that the MB's submission that it received confirmation letter from Mr. Rajesh Mewawalla after the date of signing the balance sheet was false and misleading and amounted to suppression of material facts from SEBI.

Instance 3: Loan vis-à-vis Investment in property development business

54. As already discussed above in para 20, the audit report of the MB for FY 2022-23 under the section "*Emphasis of Matter*" mentioned that the MB had utilized an amount of Rs. 7.50 Crore for making an advance towards construction project to two companies on certain terms and conditions. In this regard, the MB, vide email dated June 06, 2024 had submitted that Rs. 7.50 Crore was not utilized as an advance towards a construction project but was given as loan to the companies Viz. Boisar Realty and Falcon.
55. However, the statutory auditor of the MB, vide letter dated June 07, 2024 submitted to SEBI that the MB had advanced Rs. 3.50 Crore to each of the two entities, viz. Boisar Realty and Falcon during FY 2022-23 and that during the audit period, the management of MB furnished written confirmations of both the parties affirming that the advanced amount was intended towards a joint development project for the acquisition of land. In support of his claim, the Statutory Auditor submitted confirmation letters received by the MB from Boisar Realty and Falcon as well as letters of the MB expressing interest to invest

amount towards joint development to acquire a land parcel in Boisar. (Refer to paras 21 to 24 of this order for more details).

56. In view of the above, it was apparent that MB had knowingly submitted false and misleading statement to SEBI.

Instance 4: Misleading information regarding the Compliance Officer

57. As per SEBI's records, the Compliance Officer of the MB, as on the date of inspection, was Mr. Rushabh Shroff. When details of the Compliance Officer were sought by the inspection team, the MB, in the PIQ submitted the details of three individuals: Mr. Rushabh Shroff, Ms. Mala Soneji and Mr. Satish Sheth. It was further observed that Ms. Mala Soneji was mentioned as the Compliance Officer in the Structured Digital Database (SDD) maintained pursuant to the requirements under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015.
58. As per MB's submissions, Ms. Mala Soneji was the Compliance Officer when the inspection by SEBI was conducted during February 2024. The MB submitted that Ms. Mala Soneji was appointed as the Compliance Officer vide board resolution dated May 02, 2020 and that pursuant to her stepping down, Mr. Rushabh Shroff was appointed as the Compliance Officer vide board resolution dated March 27, 2024, i.e., after the inspection was conducted.

It was observed that the MB had previously submitted to SEBI in its letter dated October 21, 2022 (reply to the communication of findings of the previous inspection) that *"Mr. Rushabh Shroff is the Compliance Officer at all times since 2007. Ms. Mala Soneji was designated as compliance officer for the purpose of assisting Mr. Rushabh Shroff she is assistant compliance officer. Appointment of Mr. Rushabh Shroff was communicated to SEBI by submitting data in the year 2007."* However, the MB later submitted a Board Resolution regarding appointment of Ms. Mala Soneji as the Compliance Officer w.e.f. May 02, 2020.

59. In view of the above, the information submitted by the MB in the PIQ whereby three persons were shown as its Compliance Office and the information submitted in its letter dated October 21, 2022 was found to be inaccurate.
60. In addition to the above, it was observed that Mr. Rushabh Shroff was shown as the Compliance Officer at all times in the half yearly reports submitted by the MB from March 2020 to September 2023. The MB was therefore observed to have submitted false information to SEBI in the half yearly reports from March 2020 to September 2023.
61. It was also noted that changes in details of Compliance Officer were not intimated to SEBI, as prescribed, through the SEBI Intermediary Portal. The MB claimed that the changes were intimated to SEBI via email to mb@sebi.gov.in. However, no such email was found to have been received at the said email address. Further, the MB failed to provide any documentary evidence of having sent such email intimation. The MB was therefore observed to have submitted false information to SEBI.

Instance 5: Net worth of MB for FYs 2021-22 and 2022-23

62. Vide email dated September 13, 2023, the MB had submitted to SEBI that its net worth for FY ended March 31, 2022 was Rs. 13,92,714. However, the net worth for the same period, as submitted by the MB on January 19, 2024 in the PIQ, was Rs. 1,91,83,465. In respect of the said mismatch, the MB submitted that its initial submission was based on the trial balance and unaudited figures whereas the net worth stated in the PIQ was based on the audited financial statements.
63. It is observed that the financial statements and the auditor's report for FY ended March 31, 2022 was signed on September 24, 2022. As both the aforesaid net worth figures were submitted by the MB after the audited financial statements were finalized and signed on September 24, 2022, the MB was found to have submitted incorrect statement to SEBI.

64. Similarly, vide email dated September 13, 2023, the MB had submitted to SEBI that its net worth for the FY ended March 31, 2023, was Rs. 79,76,957. However, the net worth for the same period, as submitted by the MB on January 19, 2024 in the PIQ, was Rs. 6,40,24,972. In respect of the said mismatch, MB submitted that its initial submission was based on the trial balance and unaudited figures whereas the net worth stated in the PIQ was based on the audited financial statements. As noted in para 15, the actual net worth of the MB as on March 31, 2023 was Rs. 3,40,24,972, after making provision for a transaction amounting to Rs. 3 Crore on account of time barred unsecured and doubtful loans/advance made to Mr. Rajesh Mewawalla.
65. It is observed that the net worth submitted as part of the PIQ was 8 times the net worth submitted earlier. The explanation that the difference was on account of the financials being audited later is not satisfactory given the magnitude of the difference.

Instance 6: Failure to disclose management of 2 open offers

66. The MB did not disclose in the PIQ two open offers managed by it during the inspection period, i.e., open offers in the matter of Savant Infocomm Ltd. and Velox Industries Ltd. Prior to the commencement of inspection, the MB vide email dated February 12, 2024 was advised to *“keep all the relevant documents pertaining to all issues (Open Offer (Takeovers)/ IPO/ SME IPO etc.)...”* available for inspection. However, data pertaining to the abovementioned two open offers were not made available at the time of inspection.
67. Upon seeking confirmation after commencement of the inspection, the MB vide email dated February 14, 2024 confirmed that details of all issues handled by the MB during the inspection period were incorporated in the PIQ. The MB was thereafter advised vide email dated February 14, 2024 to make available the documents pertaining to the said two open offers. In this regard, the MB has submitted that the non-disclosure of the two open offers was inadvertent.
68. It is also pertinent to mention that during the previous inspection, the MB had failed to disclose, in the PIQ, details of open offers handled during the relevant

inspection period. The discrepancy was communicated to the MB vide letter dated September 27, 2022. Upon finding the comments of the MB on the matter to be unsatisfactory, adjudication proceedings were initiated and a show cause notice (SCN) dated May 03, 2023 was issued to the MB, *inter alia*, highlighting the failure to disclose the open offers managed.

69. In view of the above, the MB was found to have repetitively submitted false information to SEBI regarding management of open offers even after an SCN was issued for non-disclosures in the same matter.
70. The aforesaid instances demonstrated that the MB made untrue submissions and suppressed material facts from SEBI on various occasions. This raised doubts on the integrity of the MB in the conduct of its business.
71. In view of the above observations, the MB is alleged to have violated the provisions of Clauses 2, 3, 4 and 20 of Schedule III read with Regulation 13 of the MB Regulations, 1992. The said provisions read as under:

“Code of conduct.

13. Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.

SCHEDULE III

Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992

CODE OF CONDUCT FOR MERCHANT BANKERS

1.....

2. A merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.

3. A merchant banker shall fulfil its obligations in a prompt, ethical, and professional manner.

4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

20. A merchant banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the Board.”

Other findings / observations from inspection:

Non-compliance with Regulation 27 of the MB Regulations, 1992

72. The inspection team observed that securities of three companies (QMS Medical Allied Services Ltd., SVJ Enterprises Ltd. and Veerkrupa Jewellers Ltd.) whose issues were being managed by the MB were acquired by the MB in July 2022, October 2022 and March 2023 pursuant to its underwriting obligations and devolvement. Information regarding transactions of such nature are required to be submitted to SEBI on a quarterly basis in accordance with Regulation 27 of the MB Regulations, 1992. However, no documentary evidence of such submission was provided by the MB.
73. The MB vide letter dated April 30, 2024 submitted that the above lapse was inadvertent and unintentional and claimed that it had provided these disclosures in yearly disclosures and regularized the submissions in this regard.
74. It is pertinent to mention that during the previous inspection as well, the MB was found to have not submitted the quarterly information under Regulation 27. The discrepancy was communicated to the MB vide letter dated September 27, 2022 and upon finding the MB's comments on the matter to be unsatisfactory, adjudication proceedings were initiated and an SCN dated May 03, 2023 was issued, *inter-alia*, for MB's failure to submit the aforesaid quarterly reports.
75. In view of the above, the MB is found to have repetitively defaulted in submitting the quarterly reports to SEBI. Accordingly, the MB is alleged to have violated Regulation 27 of the MB Regulations, 1992. The said provision reads as under:

"Information to the Board.

27. Every merchant banker shall submit to the Board complete particulars of any transaction for acquisition of securities of any body corporate whose issue is being managed by that merchant banker within fifteen days from the date of entering into such transaction.

Provided that complete particulars of any transaction for acquisition of securities made in pursuance of underwriting or market making obligations in accordance with Chapter XA of the Securities and Exchange Board of India (Issue of Capital

and Disclosure Requirements) Regulations, 2009 shall be submitted to the Board on quarterly basis.”

Periodic Reports submitted by MB

76. Half yearly reports for the inspection period were required to be submitted by the MB with SEBI within three months of each half year (HY). However, the reports for HYs ended (HYE) March 2022 to September 2023 were filed by the MB with a delay only after the inspection team advised the MB in the course of the inspection to make the requisite submissions. The date of submission of half yearly reports for the inspection period are mentioned below:
- a) HYE March 2022: February 16, 2024 (due date June 30, 2022; delay of 596 days)
 - b) HYE September 2022: February 16, 2024 (due date December 31, 2022; delay of 412 days)
 - c) HYE March 2023: February 16, 2024 (due date June 30, 2023; delay of 231 days)
 - d) HYE September 2023: February 16, 2024 (due date December 31, 2023; delay of 47 days)
77. The MB vide letter dated April 30, 2024 submitted that it had periodically submitted the half yearly reports to SEBI by writing to the email address mb@sebi.gov.in, in accordance with the SEBI circular MIRSD/DPS-2/MB/Cir-16/2008 dated May 06, 2008. However, it was observed that the provisions of the said Circular dated May 06, 2008, pertaining to submission of half-yearly reports via email were overridden by the provisions of the SEBI circular SEBI/HO/MIRSD/MIRSD1/CIR/P/ 2017/38 dated May 02, 2017 which mandated submission of periodical reports only through the SEBI Intermediary Portal (SI Portal).
78. Further, it was observed that no periodic reports were submitted by the MB via email to mb@sebi.gov.in as claimed. The MB did not produce any documentary evidence in support of its claim of such submissions via email.
79. The MB failed to produce any evidence of having submitted the half yearly reports during the on-site inspection conducted on February 14-15, 2024 as well. The reports were later submitted on the SI portal on February 16, 2024

upon being advised by the SEBI inspection team to make the requisite submissions.

80. The MB, by delaying the filing of half yearly reports for the HY ended March 2022 to HY ended September 2023, is found to have violated Regulation 28(2) of the MB Regulations, 1992 read with para 1 and 7 of the SEBI Master Circular SEBI/HO/CFD/PoD-1/P/CIR/2023/157 dated September 26, 2023. The said provisions read as under:

MB Regulations, 1992

“Disclosures to the Board.

28 (1)

(2) The merchant banker shall submit a periodic report in such manner as may be specified by the Board from time to time.”

“Master Circular dated September 26, 2023:

...

1. Online Registration Mechanism for Merchant Bankers

1.1. The SEBI Intermediary Portal is available at <https://siportal.sebi.gov.in> for SEBI registered intermediaries including Merchant Bankers to submit registration applications online. SEBI Intermediary Portal includes online application for registration, processing of application, grant of final registration, application for surrender/cancellation, submission of periodical reports, requests for change of name/ address/ other details, etc. The link for SEBI Intermediary Portal is also available on SEBI website – www.sebi.gov.in.

1.2. All applications for registration / surrender / other requests are required to be made through SEBI Intermediary Portal only. The applicants are separately required to submit relevant documents viz. declarations / undertakings required as a part of application forms prescribed in relevant regulations, in physical form, only for records without impacting the online processing of applications for registration.

1.3. In case of any queries and clarifications with regard to the SEBI Intermediary Portal, Merchant Bankers may contact on 022-26449364 or may write at portalhelp@sebi.gov.in.

...

7. Regulatory Compliance and Periodic Reporting

7.1. The Merchant Bankers are required to submit half-yearly reports to SEBI in electronic form only by e-mail within three months from the expiry of the half year. The format of the report is specified in Annexure III.

...”

81. It is pertinent to mention that the MB was found to have not submitted the half yearly reports during the previous inspection as well. The discrepancy was communicated to the MB vide letter dated September 27, 2022. Upon finding the comments of the MB on the matter to be unsatisfactory, adjudication proceedings were initiated and an SCN dated May 03, 2023 was issued *inter alia* highlighting the failure to submit the half yearly reports. The MB is therefore found to have repetitively defaulted in submitting half yearly reports to SEBI even after an SCN was issued for non-submissions for the previous half years.

Non-compliance with MB certification requirements

82. A merchant banker is required to ensure that at least two KMPs have certification from NISM for “NISM-Series-IX: Merchant Banking Certification Examination”. However, it was found that none of the KMPs had the requisite certification between April 01, 2022 (beginning of the inspection period) and August 05, 2023 and only one KMP had the certification thereafter.
83. The MB provided valid certificates of “NISM-Series-IX: Merchant Banking Certification Examination” of 2 individuals – Ms. Mala Soneji and Ms. Shreya Jhawar. It was observed that Ms. Shreya Jhawar was not a KMP and Ms. Mala Soneji’s certification was valid w.e.f. August 06, 2023.
84. The MB is therefore found to have violated SEBI Notification dated August 02, 2013 read with Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (“**CAPSM Regulations, 2007**”).
85. The MB submitted a Board Resolution passed on May 02, 2020 appointing Ms. Mala Soneji as the Compliance Officer. The Board Resolution appointing Mr. Rushabh Shroff as the Compliance Officer was thereafter passed on March 27, 2024. Ms. Mala Soneji was therefore the Compliance Officer during the inspection period, i.e., April 01, 2022 to October 31, 2023.
86. The MB did not provide the certificate of “NISM-Series-III A: Securities Intermediaries Compliance (Non-Fund) Continuing Professional Education” of the Compliance Officer during the inspection period – Ms. Mala Soneji. It

therefore appeared that the Compliance Officer did not possess the requisite certification. The MB is therefore found to have violated SEBI Notification dated March 11, 2013 read with Regulation 3 of CAPSM Regulations, 2007.

87. The aforesaid non-compliances were earlier brought to MB's notice by SEBI vide letter dated September 27, 2022 while communicating the findings of the previous inspection. Further, an Administrative Warning was previously issued vide letter dated January 24, 2023 *inter alia* for the failure of the Compliance Officer and the KMPs to obtain the mandatory NISM certifications. However, the MB failed to take corrective measures despite the administrative warning.
88. Further, the MB who employed the KMPs including the Compliance Officer had failed to ensure that such person obtained requisite NISM certification by passing NISM-Series-III A certification / NISM Series IX Merchant Banking certification within two years from the date of the Notifications dated March 11, 2013 and August 02, 2013, respectively leading to violation of SEBI notification dated March 11, 2013 as well as August 02, 2013 (for NISM Series IX Merchant Banking certification) read with Regulation 3 of CAPSM Regulations, 2007. Further, these violations of the MB have led to violation of Regulation 9A(1)(e) of the MB Regulations, 1992 which mandates that the MB shall abide by the regulations made under the Act, i.e., MB Regulations, 1992 and CAPSM Regulations, 2007, in respect of the activities carried on by it as merchant banker.
89. The provisions of CAPSM Regulations, 2007 and SEBI Notifications are quoted below:

“CAPSM REGULATIONS, 2007

...

Obligation to obtain certificate

3. (1) The Board may by notification in the Official Gazette require such categories of associated persons to obtain requisite certificate for engagement or employment with such classes of intermediaries and from such date as may be specified in the notification...”

“SECURITIES AND EXCHANGE BOARD OF INDIA NOTIFICATION

Mumbai, the 11th day of March 2013

Notification under regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

No. LAD-NRO/GN/202-13/33/1103 - *In terms of sub-regulation (1) of regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (the Regulations), the Board may require, by notification, any category of associated persons as defined in the Regulations to obtain requisite certification(s).*

Accordingly, it is notified that with effect from the date of this notification, the associated persons functioning as compliance officers of intermediaries registered with the Board as stock brokers, or depository participants, or merchant bankers, or underwriters, or bankers to the Issue, or debenture trustees or credit rating agencies, shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as “NISM”) by passing the NISM-Series-III A: Securities Intermediaries Compliance (Non-Fund) Certification Examination (hereinafter referred to as “SICCE”) as mentioned in the NISM communiqué No. NISM/Certification/Series-III A: SIC/2013/01 dated January 7, 2013.

...

“SECURITIES AND EXCHANGE BOARD OF INDIA NOTIFICATION

Mumbai, the 2nd day of August 2013

Notification under regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

No. LAD-NRO/GN/2013-14/15/6319. *In terms of sub-regulation (1) of regulation 3 of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (the Regulations), the Board may require, by notification, any category of associated persons as defined in the Regulations to obtain requisite certification(s).*

Accordingly, it is notified that with effect from the date of this notification, Merchant Bankers registered with the Board shall ensure that atleast two associated persons designated as Key Management Personnel, who,-

- a. perform SEBI regulated activities such as initial public offer, further public offer, Open Offer, Buy-back, Delisting;*
- b. deal with the issuers in connection with activities mentioned in (a) above;*
- c. deal with intermediaries associated with activities mentioned in (a) above;*

d. act as designated Compliance Officer dealing with the activities mentioned in (a) above;

e. submit Due Diligence Certificates to SEBI in connection with the activities mentioned in (a) above;

shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as 'NISM') by passing the NISM-Series-IX: Merchant Banking Certification Examination (hereinafter referred to as 'MBCE') as mentioned in the NISM communiqué No. NISM/Certification/NMD/Series-IX: MB/2013/01 dated March 6, 2013 within two years from the said date of notification:

..."

Track Record disclosure by MB on its Website

90. The MB was found to have disclosed the track record of public issues handled by it on its website at https://focl.in/pdf/Track_Record/Track%20Record_13022024.pdf. The track record disclosed by MB was, however, not in accordance with the SEBI Circular No. CIR/MIRSD/1/2012 dated January 10, 2012. In the disclosures of track record for each issue managed by it, the MB, *inter-alia*, failed to disclose the type of issue (IPO/ FPO), subscription level, details of QIB holding, details of financials of the issuer, details of trading status in the scrip of the issuer, details of change in directors, status of utilization of issue proceeds, price-related data, basis for issue price, etc. The MB submitted that it had initiated steps to rectify the same as soon as the discrepancy was brought to its notice.
91. As the MB had admitted the violation on its part, the MB is found to have violated para 8 under Chapter II of SEBI Master Circular SEBI/HO/CFD/PoD-1/P/CIR/2023/157 dated September 26, 2023 read with Clause 4 and 21 of Schedule III and Regulation 13 of the MB Regulations, 1992. The said provision reads as under:

MB Regulations, 1992

"Code of conduct.

13. Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.

SCHEDULE III

Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992

CODE OF CONDUCT FOR MERCHANT BANKERS

4. *A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.*

21. *A merchant banker shallabide by the provisions of the Act, regulations made thereunder, circulars and guidelines, which may be applicable and relevant to the activities carried on by it.....”*

“Master Circular dated September 26, 2023:

...

8. Disclosure of Track Record of the public issues managed by Merchant Bankers

8.1. *In order to enable investors to understand the level of due diligence exercised by the merchant bankers in managing public issues, the merchant bankers are required to disclose the track record of the performance of the public issues managed by them. The track record is required to be disclosed for a period of three financial years from the date of listing for each public issue managed by the merchant banker. The format for disclosure of track records is given in the Annexure IV.*

8.2. *The track record shall be disclosed on the website of the merchant banker and a reference to this effect shall be made in the offer documents of public issues managed in the future. In case more than one merchant banker is associated with a public issue, all merchant bankers who have signed the due diligence certificate, as disclosed in the offer document, shall disclose the track record.”*

Summary of violations and the need for interim directions:

92. As discussed in detail in the above paragraphs, the MB acted as a registered merchant Banker without meeting the capital adequacy requirement (net worth of Rs. 5 Crore), as mandated under the provisions of the MB Regulations, 1992. The MB, though its investments in a joint venture for development of a property, ventured into business other than the securities market. Further, the MB accepted public deposits to meet its underwriting obligations in violation of the provisions of the Companies Act, 2013 and SEBI Master Circular dated September 26, 2023. Further, the total underwriting obligations of the MB at various points of time exceeded twenty times its net worth. Apart from the above, the MB is *prima facie* found to have made false and misleading submissions, as detailed in above paragraphs.

93. The statutory requirements laid down by SEBI, as mentioned in the preceding paragraphs, are mandatory in nature and a merchant banker is bound to comply with such requirements without any exemption or relaxation. The non-compliances with the laid down obligations under the MB Regulations, 1992 and various SEBI Circulars, as observed in this case, compromise the regulatory framework.
94. It is noted that the MB remains non-compliant with the net worth requirements. An entity functioning as a merchant banker without having prescribed minimum net-worth poses a systemic risk to the securities market. Since the MB is non-compliant with net-worth requirements, the continuation of merchant banking business by the MB is likely to affect the stability of the securities market and is likely to prejudice the interests of investors in securities market.
95. Considering the above, as an interim measure, an urgent preventive action needs to be taken against the MB by way of passing an ad interim ex-parte order sum show cause notice.

Direction:

96. Keeping in view the *prima facie* observations and findings recorded in the preceding paragraphs and in order to protect the integrity of the securities market, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B(1) read with Section 19 of the SEBI Act, 1992, pending adjudication of the allegations against the Noticee detailed in this Order, hereby debar the Noticee from taking any new mandate in relation to the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management, until further order.
97. The foregoing *prima facie* observations contained in this Order, are made on the basis of the material available on record. The said *prima facie* findings shall

be considered as a show cause notice and the Noticee is directed to show cause as to why suitable directions/prohibitions under Sections 11, 11 (4) and 11B of SEBI Act, 1992, including the directions for suspension or cancellation of the certificate of registration of the Noticee as a merchant banker should not be issued against it for the abovementioned alleged violations.

98. Further, Noticee is also called upon to show cause as to why inquiry should not be held against it in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed on it under Sections 11 (4A) and 11B (2) read with Section 15HB of the SEBI Act, 1992 for the alleged violations of the provision of Regulation 27 and 28(2) of the MB Regulations, 1992 read with para 1 and 7 of the SEBI Master Circular SEBI/HO/CFD/PoD-1/P/CIR/2023/157 dated September 26, 2023; SEBI notification dated March 11, 2013 and August 02, 2013 read with Regulation 3 of CAPSM Regulations, 2007 and Regulation 9A (1) (e) of the MB Regulations, 1992 and Para 8 under Chapter II of SEBI Master Circular SEBI/HO/CFD/PoD-1/P/CIR/2023/157 dated September 26, 2023 read with Clause 4 and 21 of Schedule III and Regulation 13 of the MB Regulations, 1992.
99. In this context, the Noticee may, within 21 days from the date of receipt of this Order, file its reply/objections, if any, to this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed in that regard.
100. The above directions shall take effect immediately and shall be in force until further orders.
101. A copy of this order shall be served upon the Noticee and Stock Exchanges.

PLACE: MUMBAI

DATE: OCTOBER 23, 2024

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA