

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2022-23/18838-18845]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Landmark Capital Advisors Private Limited PAN: AACCL4482A	Mr. Deba Prasad Roy PAN: AFXPR4370N
Mr. C Parthasarathy PAN: AAFPC7617L	Mr. Milind Korde Surendra PAN: AGHPK7750J
Mr. P B Ramapriyan PAN: AAPPR8313Q	Mr. Raj Bhardwaj Narain PAN: AAKPB0852D
Mr. Ashish Kumar Joshi PAN: AAFPJ2088L	Mr. Kedar Deshpande PAN: AAMPD7153P

In the matter of

LANDMARK CAPITAL ADVISORS PRIVATE LIMITED

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted inspection of M/s Landmark Capital Advisors Private Limited (hereinafter referred to as “**Noticee 1**” / “**PMS-Landmark**” / “**the Company**”) with respect to its portfolio management activities from February 25, 2020 to February

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29, 2020. The period covered in inspection was from April 01, 2018 to March 31, 2019 (hereinafter referred to as “**inspection period**”). Noticee 1 is registered as portfolio manager with SEBI registration no. INP000005315. Mr. Deba Prasad Roy (hereinafter referred to as “**Noticee 2**”), Mr. C Parthasarathy (hereinafter referred to as “**Noticee 3**”), Mr. Milind Korde Surendra (hereinafter referred to as “**Noticee 4**”), Mr. P B Ramapriyan (hereinafter referred to as “**Noticee 5**”), Mr. Raj Bhardwaj Narain (hereinafter referred to as “**Noticee 6**”), Mr. Ashish Kumar Joshi (hereinafter referred to as “**Noticee 7**”) and Mr. Kedar Deshpande (hereinafter referred to as “**Noticee 8**”) were directors of the Company at the time of occurrence of the alleged violations (Noticees 1 to 8 are hereinafter collectively referred to as “**Noticees**”).

2. The findings/ observations made during the course of inspection were communicated to Noticee 1 by SEBI vide mail dated April 24, 2020. After examining the reply submitted by the Noticee 1 vide letter dated April 30, 2020, it has been alleged that the Noticees violated various provisions of SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as “**Portfolio Managers Regulations, 1993**”), SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011 (hereinafter referred to as “**KRA Regulations, 2011**”) and applicable SEBI Circulars. The violations alleged to have been committed by the Noticees are summarised in the table below:

Table - 1

Sr. No.	Alleged Violations	Regulatory Provisions
1	Failure to maintain minimum corpus of clients to minimum requirements	Regulation 15(1A) of Portfolio Managers Regulations, 1993

Sr. No.	Alleged Violations	Regulatory Provisions
2	Holding clients' securities in its own name	Regulation 16(8) of Portfolio Managers Regulations, 1993.
3	Non-maintenance of records in support of investment transactions	Regulation 17(1)(e) of Portfolio Managers Regulations, 1993.
4	Failure to deploy funds received from clients in reasonable time	Regulation 13 read with Clause 2 of Code of Conduct as specified in Schedule III of Portfolio Managers Regulations, 1993
5	Provisions allowing outsourcing of core activities	Regulation 13 read with Clause 3 of Code of Conduct and clause 1 and 5 of SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011 as specified in Schedule III of Portfolio Managers Regulations, 1993
6	Failure to maintain arm's length relationship between handling activities as a portfolio manager and manager of AIF	Regulation 13 read with Clause 1 and 12(a) of Schedule III - Code of Conduct of Portfolio Managers Regulations, 1993 read with clause 3 of SEBI RPM Circular No.1 (2002-20003) dated September 17, 2002
7	Outsourcing of activity of carrying out KYC requirements and failure to obtain registration with CKYC & KRA	Regulation 16(a) and (d) of KRA Regulations, 2011

Sr. No.	Alleged Violations	Regulatory Provisions
8	Failure to redress investor grievances within 30 days of receipt of grievances	Regulation 9A(1)(c) read with 15(6) of Portfolio Managers Regulations, 1993

- 3) SEBI initiated adjudication proceedings against the Noticee under section 15C and section 15HB of SEBI Act, 1992 for the alleged violations of the relevant provisions as stated above.

APPOINTMENT OF ADJUDICATING OFFICER

- 4) The undersigned was appointed as the Adjudicating Officer (**AO**) vide Order dated November 02, 2021 under Section 15-I of the SEBI Act, 1992, rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”), to inquire into and adjudge under section 15C and section 15HB of SEBI Act, 1992 the violations of aforesaid provisions alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

- 5) Show Cause Notice No. SEBI/EAD/BM/DS/21091/2022 dated May 18, 2022 (hereinafter referred to as “**SCN**”) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 and rule 4 of SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against it and why penalty, if any, under section 15C and section 15HB of SEBI Act, 1992 be not imposed on the Noticees.

- 6) The SCN was duly served on the Noticee 1, 2, 4-8 through SPAD and digitally signed e-mail. As Noticee 3 was in judicial custody at Central Prison,

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Chanchalguda, Hyderabad, the SCN was dispatched through SPAD to Central Prison, Chanchalguda and digitally signed email was sent to the Superintendent, requesting him to hand over the SCN to Noticee 3. The SCN was duly handed over by the Superintendent to Noticee 3 and his acknowledgement was recorded and sent by the Superintendent to office of the undersigned. Also, counsel of Noticee 3 for another case was contacted and SCN, along with annexures was sent to him and he was asked to hand over the same to Noticee 3. Hence, SCN was duly delivered to Noticee 3. In the interest of natural justice, the Noticees were provided an opportunity of hearing on June 17, 2022 vide notice dated June 02, 2022, which was duly delivered to all Noticees. Vide mail dated June 02, 2022, Noticee 2 requested for adjournment of hearing, citing personal reasons. Vide mail dated June 13, 2022, Noticee 7 requested on behalf of himself and also for Noticees 1, 2 and 6 to adjourn hearing till June 30, 2022 citing medical reasons of their team members. The request was considered by the undersigned and vide mail dated June 16, 2022, Noticees 1, 2, 6 and 7 were advised to appear before the undersigned on July 07, 2022. As no reply was received from Noticees 3, 4, 5 and 8, they were also advised to appear for hearing before the undersigned on July 07, 2022 vide mails dated June 16, 2022.

- 7) Vide mail dated June 16, 2022, Noticee 4 submitted reply to the SCN. Vide mail dated July 06, 2022, Noticee 7 submitted reply on behalf of Noticees 1, 2, 5, 6, 7 and 8.
- 8) Noticees 1, 2, 5, 6, 7 and 8 appeared through their authorized representative (AR) on the scheduled date and time of hearing. The AR reiterated the submissions already made vide mail dated July 06, 2022. Vide email dated July 10, 2022, some additional submissions were made by Noticees 1, 2, 5, 6, 7 and 8.

9) Noticee 4 also appeared through his authorized representative on the scheduled date and time of hearing. The AR reiterated submissions already made vide mail dated July 06, 2022. As Noticee 4 was first appointed as an additional director, the AR was asked by the undersigned to submit details / minutes of the meeting in which regularization of his appointment was made. The AR sought time till July 12, 2022 to submit the same, which was granted by the undersigned. Vide mail dated July 12, 2022, Noticee 4 informed that he was not in possession of documents sought by the undersigned.

10) Noticee 3 did not avail second opportunity of hearing provided to him on July 07, 2022. In the interest of natural justice, Noticee 3 was provided another opportunity of hearing on July 11, 2022 vide mail dated July 07, 2022. Vide mail dated July 09, 2022, Authorised representative (AR) of Noticee 3 requested for additional 3 weeks' time, citing adverse psychological condition of Noticee 3. His request was considered by the undersigned and he was advised vide mail dated July 11, 2022, to appear before the undersigned on July 26, 2022 at 3:00 PM. However, Noticee 3 did not appear for the hearing. Vide mail dated July 26, 2022 (14:22 Hrs), the AR cited reason of illness of concerned official of PMS-Landmark due to which he is unable to seek documents, and requested for three more weeks' time. In the interest of natural justice, vide mail dated August 05, 2022, Noticee 3 was granted another opportunity of hearing on August 10, 2022. AR, vide mail dated August 06, 2022, requested for full three weeks' time, as originally requested by him in his mail dated July 26, 2022. The same was granted by the undersigned and Noticee 3 was asked to appear for the hearing on August 17, 2022.

11) Vide mail dated August 13, 2022, the AR of Noticee 3 requested for another 15 days' time, citing unavailability of documents. Vide mail dated August 17, 2022, AR of Noticee 3 was called over phone he was informed that he was being granted

last and final opportunity to appear before the undersigned on August 26, 2022 and in case of non-appearance, no further opportunity of hearing will be granted and the matter will be proceeded with on the basis of material available on record. It was also documented through email that the AR had expressly consented to the same on behalf of Noticee 3. The AR appeared on behalf of Noticee 3 on the scheduled date and time and reiterated the submissions already made vide letter dated August 26, 2022. The AR requested time till August 29, 2022, to submit additional documents, in support of its submissions vide letter dated August 26, 2022, which was granted by the undersigned. Noticee 3, vide mail dated August 29, 2022, submitted a copy of Form DIR-12 which shows that Noticee 3 was non-executive director in PMS-Landmark during the inspection period.

12) The submissions made by the Noticees 1, 2, 5, 6, 7 and 8 jointly are as summarized below:

- a) *Failure to maintain minimum corpus of clients to minimum requirements*
 - i) *The SCN has alleged that PMS-Landmark has violated Regulation 15(1A) of the PMS Regulations which casts an obligation upon the portfolio manager to not accept from the client, funds or securities worth less than rupees twenty-five lakhs.*
 - ii) *The SCN refers to the records of transaction of clients of PMS-Landmark which provides that PMS-Landmark had deployed funds of certain clients into non-convertible debentures which were subsequently redeemed by PMS-Landmark in a total of three tranches on such dates as provided in Annexure - 2 to the SCN. The SCN has alleged that upon each incidence of the aforesaid redemption, the redeemed amount was returned to the respective clients which resulted in reduction of the corpus of those clients to an amount less than rupees twenty-five lakhs and therefore PMS-*

Landmark is in breach of the minimum investment requirement as provided under Regulation 15(1A) of the PMS Regulations.

iii) In this regard, the following was submitted:

- (1) The requirement of minimum investment amount of rupees twenty-five lakhs per client under Regulation 15(1A) of the PMS Regulations was adhered to by PMS-Landmark.*
- (2) It is noted that Regulation 15(1A) of the PMS Regulation stipulates- "the portfolio manager shall not accept from the client, funds or securities worth less than twenty-five lac rupees."*
- (3) Further, Question 9 under SEBI FAQ on PMS Regulations states that portfolio manager is required to accept minimum INR 50 Lacs (INR 25 Lacs) or securities having a minimum worth of INR 50 Lacs from the client. (Note: Minimum investment amount requirement at the time of inspection period was INR 25 Lakh).*
- (4) Further, it is noted that Paragraph 3(a) of the SEBI Circular No.: Cir. /IMD/DF/16/2010 stipulates- "To ensure compliance with regulation 15(1A) of SEBI (Portfolio Managers) Regulations, 1993, it is clarified that the first single lump-sum investment amount received as funds or securities from clients should not be less than 5 Lakh." (Note: Minimum investment amount requirement at the time of inspection period was INR 25 Lakh).*
- (5) It was submitted that as per Noticees' reading and understanding of the above provisions, the obligation under Regulation 15(1A) of the PMS Regulations to not accept funds or securities of clients worth less than INR 25 Lakhs is only limited to the time of onboarding the client / accepting the first single lump-sum investment amount and not on the portfolio manager's ability to return funds in the usual course of portfolio management.*

- (6) Further, reference was made to Question II under SEBI FAQ on PMS Regulations which states that the client may withdraw partial amounts from his portfolio, in accordance with the terms of the agreement between the client and the Portfolio Manager. However, the value of investment in the portfolio after such withdrawal shall not be less than the applicable minimum investment amount.
- (7) It is pertinent to note that the aforesaid requirement on the value of investment in the portfolio to not be less than applicable minimum investment amount is only provided for an event wherein the client withdraws the funds at its discretion. However, no restrictions have been placed on the portfolio manager's ability to return funds in the usual course of portfolio management.
- (8) Without prejudice to the above, the above reading of the law is also in consonance with other asset management laws, viz. the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, wherein a minimum investment amount by each contributor (viz. INR 1 Crore) has been prescribed and restrictions on maintaining the minimum investment amount have been imposed on the amounts which may be withdrawn by the contributor at its discretion (in an open-ended alternative investment fund), however no restrictions have been placed on the manager's ability to make distributions/redeem units in the usual course of fund management (Refer Paragraph 3(i) of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014).
- (9) Therefore, the requirement of Regulation 15(1A) is only limited to 'acceptance' of funds or securities at the inception of the relationship between the portfolio manager and the client or while accepting the first single lump-sum investment amount. It does not impose an obligation upon the portfolio manager to ensure that the minimum investment

amount is maintained at the time of returning the funds from time to time to the respective clients when it is being done at the discretion of the portfolio manager.

(10) In the present case, PMS-Landmark received from each client a sum of not less than INR 25 Lakhs at the time of on-boarding the client/ receiving first single lump-sum investment amount. Therefore, it was submitted that PMS-Landmark is not in breach of the minimum investment amount requirement under Regulation 15(1A) of the PMS Regulations.

b) Holding client's securities in its own name

i) The SCN has alleged that PMS-Landmark has violated Regulation 16(8) of PMS Regulations which casts an obligation upon the portfolio manager to ensure that it shall not hold listed or unlisted securities belonging to the clients/ portfolio account in its own name.

ii) The SCN refers to the statement of liquid mutual fund folios (as provided in Annexure- 3 to the SCN) to state that PMS-Landmark has invested undeployed funds of clients in liquid mutual funds in its own name with multiple folios, in violation of Regulation 16(8) of the PMS Regulations.

iii) In this regard, the following was submitted:

(1) The applicable provision pertaining to deployment of funds by portfolio manager in liquid mutual funds, pending investment is provided under SEBI circular no. Cir. /IMD/DF-1116/2012 on "Portfolio Managers- Deployment of clients fund in liquid Mutual Funds" dated July 16, 2012, which states as follows:

(2) "It is hereby clarified that pending investment of funds. any short-term deployment of funds in liquid Mutual Funds for the purpose of cash management shall be maintained on the lines as specified by the SEBI Circular no. IMD/DoF-IIPMS/Cir- -11/2009 dated June 23. 2009."

(3) Further, Paragraph 2 of SEBI Circular no.: IMD/DoF-1/PMS/Cir- 4/2009 dated June 23, 2009, referred in the aforesaid Circular provides that:

(4) "Regulation 16(7) of the SEBI (Portfolio Managers) Regulations, 1993. states that "the portfolio manager shall segregate each client's funds and portfolio of securities and keep them separately from his own funds and securities and be responsible for safe keeping of clients' funds and securities."

With regard to the above. it is hereby clarified that portfolio managers may keep the funds of all clients in a separate bank account maintained by the portfolio manager subject to the following conditions:

(a) There shall be a clear segregation of each client's fund through proper and clear maintenance of back-office records.

(b) Portfolio Managers shall not use the funds of one client for another client.

(c) Portfolio Managers shall also maintain an accounting system containing separate client-wise data for their funds and provide statement to clients for such accounts at least on monthly basis.

(d) Portfolio Managers shall reconcile the client-wise funds with the funds in the aforesaid bank account on daily basis"

(5) It is necessary to distinguish temporary investments into liquid mutual funds from investments being made in accordance with the investment objective and policy of the portfolio management services. We understand that the stipulation under Regulation 16(8) applies with respect to deployment of funds in accordance with the investment objective and policy of the portfolio management services. However, the applicable provisions with respect to short-term deployment of funds in liquid mutual funds for the purpose of cash management have been detailed under paragraph above and that the applicable provisions do

not entail the obligation upon the portfolio manager to ensure that it shall not hold such liquid mutual fund investments in its own name or in a pooled manner.

(6) It was submitted that PMS-Landmark has adhered to the conditions of sub-para 4 above as:

(a) PMS-Landmark has maintained clear segregation of each client's interest in such liquid mutual fund through proper and clear maintenance of back-office records.

(b) PMS-Landmark has created internal folios for the purpose of distinguishing interest in liquid mutual fund of one client from another so that interest of one client in liquid mutual fund is not allocated / apportioned to another client.

(c) PMS-Landmark has circulated these folios to the clients along with a statement of account at regular intervals (on a monthly basis).

(d) PMS-Landmark has reconciled the client-wise interest in such liquid mutual fund on daily basis.

(7) A sample portfolio monthly statement and a copy of internal books showing segregation of each client 's interest was provided in support of its submissions.

(8) There is no obligation on the portfolio manager to make temporary investments which includes investment in liquid mutual funds in the name of the client as such temporary investments do not attract the application of Regulation 16(8) and only requires the portfolio manager to comply with the conditions as detailed under sub-paragraph 4 above. Hence, PMS-Landmark is not in breach of Regulation 16(8) of the PMS Regulations.

c) Non-maintenance of records in support of investment transaction

- i) *It was submitted that investment into Irina Hospitality P Ltd. was made through a secondary transaction wherein non-convertible debentures were transferred from the Landmark Return Multiplier Fund, a scheme of Landmark Opportunity Fund ("Landmark AIF") managed by Landmark Capital Advisors Private Limited to the respective clients.*
- ii) *Kindly note that the investment team of the Landmark AIF which included Mr. Ashish Joshi, Mr Bhavya Bagrecha and Mr. Rohit Chauhan (employees involved in activities of PMS-Landmark as well) prepared proper supporting documents for the investment by the Landmark AIF into Irina Hospitality P Ltd. The team also circulated separate Investment Committee Note for AIF and PMS for the decision making. Copy of the same was also provided in support of the submission.*
- iii) *A separate Investment Committee Note was circulated for Landmark AIF and PMS-Landmark respectively. The resources involved in the decision-making for the Landmark AIF and that for the portfolio management division were common and the due diligence and the data, facts and opinion leading to that investment decision also remained the same.*
- iv) *PMS-Landmark submitted that it has not violated Regulation 17(1)(e) of the PMS Regulations as the records supporting investment rationale for investments made in Irina Hospitality P Ltd was maintained in the manner stated above.*
- d) *Failure to deploy funds received from clients in reasonable time*
 - i) *It was submitted that the portfolio managers are required to provide portfolio management services in accordance with the investment objective and policies provided in Clause 4 of the portfolio management services agreement.*
 - ii) *While undertaking any deployment decisions, even though the portfolio manager is required to deploy the money received from a client for an*

investment purpose as soon as possible, the portfolio manager is also required to ensure that such an investment is within the investment objective and policy as agreed with the client. Further, the portfolio manager also needs to ascertain that it is rendering the best possible advice by having regard for the client's needs and the environment, and his own professional skills without rushing into a transaction which may otherwise be counter-productive to the interest of the clients.

- iii) It is submitted that in certain cases, upon due diligence into an investee company, several issues came to light because of which PMS-Landmark had to let go of such investment opportunities after expending significant time and resources into the due diligence process and in certain cases, an unexpected change in market situation rendered certain investments unreasonable. Therefore, PMS-Landmark was duty-bound in terms of the PMS Regulations and the portfolio management services agreement to ensure that such investments were not made as they would not be in accordance with the investment object and policy as agreed with the client. Hence, PMS-Landmark consciously and judiciously chose to not deploy funds in such investments.*
- iv) Wherever PMS-Landmark identified an investment opportunity meeting the investment objective and policy and the due diligence process, monies were expeditiously deployed.*
- v) Therefore, it is humbly submitted that PMS-Landmark has not violated Regulation 13 read with Clause 2 of Code of Conduct as specified in Schedule III of PMS Regulations as all investment decisions were made in accordance with the PMS Regulations and the portfolio management services agreement entered with the clients.*
- e) Provisions allowing outsourcing of core activities*

- i) *It is submitted that intermediaries are not permitted to outsource their core business activities. For the purposes of a portfolio manager, 'core business activity' as provided in the Circular shall mean investment related activities.*
- ii) *It is submitted that, the intention of Clause 21 of Portfolio Management Services Agreement clause was not to outsource the core activities of PMS-Landmark, instead to obtain services of certain professionals such as bankers, lawyers, accountants, brokers, professional agents etc. who are in the business of providing services very distinct from the core activity of PMS-Landmark i.e., making investments. We understand that to adhere to the highest standards of service, reliance on the capabilities of such service providers is imperative for PMS-Landmark as PMS-Landmark does not purport to have qualification or expertise in relation to the same. Further, please note that PMS-Landmark has never outsourced its ' investment activity'.*
- iii) *Additionally, it is submitted that PMS-Landmark is not required to take the responsibility for the accuracy and completeness of the services provided by such third-parties (till the time it ensures compliance with principles of outsourcing which includes conducting due diligence, monitoring performance etc.) and therefore, suitable carve-outs have been provided under Clause 21 of the portfolio management services agreement to protect against any liability arising due to bona fide reliance on services provided by such third-parties. It is further submitted that wherever advice from a professional is necessary, failure to duly seek such advice would constitute a lapse on part of PMS- Landmark to act prudently in the interests of the client and would result in a breach of its fiduciary duty.*
- iv) *Therefore, considering the fact that PMS- Landmark has never outsourced its 'investment activity', it did not violate Regulation 13 of PMS Regulations read with Clause 3 of Code of Conduct as specified in Schedule III of PMS*

Regulations and Clause 1 and 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011.

- f) Failure to maintain arm's length relationship between handling activities as a portfolio manager and manager of AIF*
 - i) It is submitted that by applying the rule of 'Ejusdem Generis' i.e. "of the same kind or class" which is used to interpret written statutes, the phrase "a person, directly or indirectly connected with the applicant has not been granted registration by the Board in case of the applicant being a body corporate" has to be read in consonance with the construct of Regulation 6 of the PMS Regulations which provides for granting registration to any person as a portfolio manager and cannot be stretched to mean grant of registration by SEBI under any other regulation viz. Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.*
 - ii) Therefore, as per our conjoint reading of Regulation 6(c) of the PMS Regulations and the Clause 3 of RPM Circular, the obligation to ensure absolute arms' length relationship arises wherein persons directly or indirectly connected with the applicant have been granted registration as a portfolio manager under the PMS Regulation and conditions contained under RPM Circular cannot be extended to investment management services offered in relation to an alternative investment funds which is regulated through a distinct regulation i.e., Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.*
 - iii) Without prejudice to the above, please note that PMS-Landmark has always endeavored to achieve arm's length relationship between the activities of the alternative investment fund and of the portfolio management services and has ensured that investor interest has not been compromised.*
 - iv) Therefore, it is humbly submitted that PMS-Landmark was not under an obligation to maintain a strict segregation between PMS and AIF resources*

per the PMS Regulations and Circulars thereunder and hence had not violated Regulation 13 of the PMS Regulations read with Clause 1 and 12(a) of Schedule III - Code of Conduct of the PMS Regulations and Clause 3 of RPM Circular No. 1 (2002-03) dated September 17, 2002. Further, it is pertinent to note that PMS-Landmark has steadily scaled down the portfolio management services operations and with effect from February 9, 2020, PMS-Landmark has been wound up. The letter confirming surrender of license was also provided in support of the submission.

- g) Outsourcing of activity of carrying out KYC requirements and failure to obtain registration with CKYC & KRA*
 - i) It is submitted that as per their understanding of the above provisions, intermediaries are required to perform initial KYC / due diligence of the client and upload the KYC information with proper authentication on the system of the KRA in an event the KYC details of such clients are not already available in the database of KRAs.*
 - ii) Paragraph 2.2.6 of SEBI Circular No. SEBI HO/ MIRSD/ DOS3/ CIR/ P/ 20 18/ 104 dated July 04, 2018 on "Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under", provides that:*
 - a) identification and verification of the identity of a client; and*
 - b) determination of whether the client is acting on behalf of a beneficial owner, identification of the beneficial owner and verification of the identity of the beneficial owner. Such third party shall be regulated, supervised or monitored for. and have measures in place for compliance with CDD and record-keeping requirements in line with the obligations under the PML Act ..."*

- iii) *Therefore, it is understood that an intermediary may rely on a third party for the purpose of client due diligence and the same is not prohibited under applicable laws.*
- iv) *Further, Portfolio Managers Service Agreement allows intermediaries to outsource their KYC activities as well, provided they comply with the provisions KRA Regulations and guidelines issued thereunder from time to time. Accordingly, it is submitted that as per Noticees' understanding of the provisions as detailed in paragraphs above, intermediaries may rely on third parties for KYC/client.*
- v) *Please note that all the clients onboarded by PMS-Landmark already had KYC identifiers and the same were downloaded from the KRA database by Karvy on behalf of PMS-Landmark. Records of such downloads have been documented for internal record- keeping and copy of the same has been provided. The said outsourced activity conforms to the applicable provisions as stated above. Hence, it is submitted that PMS-Landmark has not violated provisions of Regulation 16(a) and (d) of the KRA Regulations.*
- vi) *Further, it was acknowledged that there has been an inadvertent omission on their part as PMS-Landmark was not registered with any one of the five KRAs or CKYC and humbly requesting SEBI to pardon the same.*
- h) *Failure to redress grievances within 30 days of receipt of grievances*
 - i) *PMS-Land mark has received four complaints which were in relation to delayed deployment of the funds in case of (i) Kanta Panchnanda; (ii). Kavita Mandai; (iii) Sanaa Rehman; and (iv) Puja Bhalla. Details of the same are as follows:*

S.no.	Name of the client	Date of receipt of complaint	Date of resolution of complaint	Mode of resolution of complaint of	Time difference
1.	Kanta Panchnanda	February 8, 2019	April 26, 2019	Return of funds	76 days
2.	Kavita Mandal	January 8, 2019	February 4, 2019	Return of Funds	27 days
3.	Sanaa Rehman	February 7, 2019	February 27, 2019	Return of funds	19 days
4.	Puja Bhalla	December 20, 2018	December 31, 2018	Return of funds	10 days

ii) Kindly note that the complaints from Kavita Mandal, Sanaa Rehman and Puja Bhalla (Sr. No 2, 3 and 4 in the table above) were received on January 8, 2019, February 07, 2019, and December 20, 2018, respectively and the same were resolved to the satisfaction of the client on February 4, 2019 (within 27 days), February 27, 2019 (within 19 days) and December 31, 2018 (with 10 days) respectively by way of return of funds. Accordingly, it was submitted that PMS Landmark has not violated Regulation 9A(1)(c) read with Regulation 15(6) of the PMS Regulations with respect to the aforesaid three complaints from Kavita Mandal, Sanaa Rehman and Puja Bhalla.

iii) Further, please note that the complaint from Kanta Panchnanda (Sr. No 1 in the table above) was received on February 08, 2019, and whilst it took slightly more than 30 days to achieve closure of the said complaint by repaying the client as the fund were repaid to the client on April 26, 2019

(within 76 days) but even in this case adequate steps were being taken by the PMS-Landmark within the stipulated time, it is only the final resolution in the form of refund which happened later.

iv) Therefore, it is humbly submitted that PMS-Landmark approached these grievances with the utmost urgency and that all of the above-mentioned grievances were ultimately resolved in a timely manner and hence, PMS-Landmark has not violated Regulation 9A(1)(c) read with Regulation 15(6) of the PMS Regulations.

i) We further submit that Mr. Deba Prasad Roy, Mr. R N Bhardwaj and Mr. Milind Korde were associated with PMS-Landmark in their capacity as non-executive directors and were not involved in the day-to-day operations of PMS-Landmark as key team members were responsible for the same.

13) Noticee 4, made submissions vide letter dated June 15, 2022, which are summarized as under:

- a) Noticee No. 4 was appointed as an additional, non-executive director on the board of directors of Landmark on September 23, 2013. In this regard, a copy of the board resolution dated September 23, 2013 was annexed.*
- b) Even during the Investigation Period, Noticee No.4 remained an additional, non- executive director of Landmark. In fact, Noticee No. 4 has not served Landmark in any other capacity. The Noticee has not signed any document or regulatory filing on behalf of Landmark. Noticee No. 4 was neither a part of such inspection nor was aware of such inspection. There are no specific charges against Noticee No. 4 in the SCN.*
- c) There is no evidence in the SCN which hints at any act or omission by Noticee No.4 or which could lead to the conclusion of any wrongdoing by Noticee No. 4 for the alleged violations.*

- d) *The Noticee No. 4 was an additional, non-executive director of Landmark. The Noticee No.4 was neither a promoter nor a key managerial personnel of Landmark at any point in time including the time when he was an additional, non- executive director.*
- e) *It was submitted that Noticee No.4 as an additional, non-executive director was not involved in the day-to-day business of Landmark as a portfolio manager / investment advisory company. In this regard, Noticee 4 referred to judgement of Hon'ble Supreme Court in Pooja R. Devidasani v. State of Maharashtra and also Chaitan M. Maniar v. State of Maharashtra.*
- f) *The SEBI has proceeded against Noticee No. 4 only on account of him being on the board of directors of Landmark during the Investigation Period under the principle of vicarious liability. SEBI has proceeded against Noticee No. 4 even before any of the allegations against Landmark have been established. It is a settled principle of law that prior to invoking the principle of vicarious liability against a director of a company, the alleged violations of the law by the company have to be established in the first place. Neither has any of the alleged violation of the law by Landmark been established, nor has it been found guilty of any violation. Noticee 4 relied upon observations made by Hon'ble Supreme Court in Aneeta Hada v. Godfather Travels and Tours (P) ; Sunil Bharti Mittal v. Central Bureau of Investigation Ltd and various other judgements.*
- g) *Without prejudice to the aforesaid, it is submitted that except Section 27, the SEBI Act does not have a deeming liability / responsibility provision. It is submitted that the Noticee No. 4 cannot be charged under the deeming provision under Section 27 of the SEBI Act because such deeming provision applies only to persons in charge of and responsible for the business of the company. It is relevant to note the deeming provision Section 27 of the SEBI Act does not refer to 'directors' but to 'persons responsible for the conduct of the business of the company'. It recognizes the fact that every director of the*

company may not necessarily be responsible for the conduct of the company's business and as a corollary not every person who is responsible for the conduct of business of a company needs to be a director of such company. Noticee 4 also relied upon the judgements of Hon'ble SAT in the case of Rahul H Shah; Vijay Remedies Limited and Others; Rashima Verma ; Videocon International Ltd

- 14) Noticee 3, vide mail dated August 26, 2022, submitted that he was non-executive director and had not attended any of the board meetings of the company during inspection period. That he was not involved in day to day affairs of the company, and hence is unaware of the alleged violations as they are technical and procedural in nature. Also, no specific allegations have been made against him in the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

- 15) Considering the findings of Investigation, the allegations made out in the SCN and the submissions made by the Noticees, I find that following issues require consideration in the present case:

ISSUE I-A - Whether Noticee 1/ PMS-Landmark is in violation of the provisions of Portfolio Managers Regulations, 1993 and KRA Regulations, 2011 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

ISSUE I-B - Whether Noticees 2 to 8 are in violation of the provisions of Portfolio Managers Regulations, 1993 and KRA Regulations, 2011 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

ISSUE II - Do the violations, if any, attract penalty under Section 15C and section 15HB of the SEBI Act, 1992?

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

16) The said provisions under which violations have been alleged against the Noticee are reproduced below –

SEBI (Portfolio Managers) Regulations, 1993

9A. Conditions of registration.—

(1) Any registration granted under

regulation 8 shall be subject to the following conditions, namely:-

a) where the portfolio manager proposes to change its status or constitution, it shall obtain prior approval of the Board for continuing to act as such after the change

c) it shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received;

13. Code of Conduct.— Every portfolio manager shall abide by the Code of Conduct as specified in Schedule III.

15. General responsibilities of a Portfolio Manager

(1A) The portfolio manager shall not accept from the client, funds or securities worth less than twenty five lacs rupees.

(6) The portfolio manager shall ensure proper and timely handling of complaints from his clients and take appropriate action immediately.

16. Investment of clients' moneys and management of clients' portfolio of securities

(8) The portfolio manager shall not hold the listed securities 58[or unlisted securities], belonging to the portfolio account, in its own name on behalf of its clients either by virtue of contract with clients or otherwise:

Provided that any portfolio manager holding the listed securities belonging to the portfolio account in its own name on behalf of its clients on the date of commencement of the Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2008 shall segregate each clients' listed securities and keep them separately within six months from such commencement:

Provided further that the Board may in the interest of investors or for the development of securities market, on an application made in this behalf by a portfolio manager with respect to any specific investment existing on the date of commencement of the Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2008, relax the strict enforcement of this regulation:

Provided further that the portfolio manager shall segregate each client's holding in unlisted securities in separate accounts in respect of investment by new clients and fresh investments by existing clients:

Provided further that existing investments in unlisted securities of clients, as on date of notification of Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2012 may continue as such till maturity of investment.

17. Maintenance of books of accounts, records, etc.—

(1) Every portfolio manager shall keep and maintain the following books of accounts, records and documents namely:-

(e) records in support of every investment transaction or recommendation which will indicate the data, facts and opinion leading to that investment decision.

Schedule III of SEBI (Portfolio Managers) Regulations, 1993

[Regulation 13]

Code of conduct - portfolio manager

1. A portfolio manager shall, in the conduct of his business, observe high standards of integrity and fairness in all his dealings with his clients and other portfolio managers.

2. The money received by a portfolio manager from a client for an investment purpose should be deployed by the portfolio manager as soon as possible for that purpose and money due and payable to a client should be paid forthwith.

3. A portfolio manager shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment. The portfolio manager shall either avoid any conflict of interest in his investment or disinvestment decision, or where any conflict of interest arises, ensure fair treatment to all his customers. He shall disclose to the clients, possible source of conflict of duties and interests, while providing unbiased services. A portfolio manager shall not place his interest above those of his clients.

12. (a) The portfolio manager shall abide by the Act, and the Rules, Regulations made thereunder and the Guidelines / Schemes issued by the Board.

Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011

Functions and obligations of an Intermediary

16. The Intermediary has the following functions and obligations –

(a) The intermediary shall perform the initial KYC/due diligence of the client, upload the KYC information with proper authentication on the system of the KRA, furnish the

scanned images of the KYC documents to the KRA, and retain the physical KYC documents:

Provided that in the case of clients of a mutual fund, the Registrar to an Issue and Share Transfer Agent appointed by the mutual fund may perform the initial KYC/due diligence of the client, upload the KYC information with proper authentication on the system of the KRA, and furnish the scanned images of KYC documents to the KRA.

(d) The intermediary shall have the ultimate responsibility for the KYC of its clients, by undertaking enhanced KYC measures commensurate with the risk profile of its clients.

SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011

1. SEBI Regulations for various intermediaries require that they shall render at all times high standards of service and exercise due diligence and ensure proper care in their operations

5. Activities that shall not be outsourced

The intermediaries desirous of outsourcing their activities shall not, however, outsource their core business activities and compliance functions. A few examples of core business activities may be – execution of orders and monitoring of trading activities of clients in case of stock brokers; dematerialisation of securities in case of depository participants; investment related activities in case of Mutual Funds and Portfolio Managers. Regarding Know Your Client (KYC) requirements, the intermediaries shall comply with the provisions of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011 and Guidelines issued thereunder from time to time.

RPM CIRCULAR NO.1 (2002-2003) dated September 17, 2002

It is clarified that while considering this aspect, the Board may consider grant of certificate to an applicant, notwithstanding that another entity in the same group has been previously granted registration by the Board, if the following conditions are fulfilled:

3. There is absolute arm's length relationship with reference to their operations.

ISSUE I-A - Whether Noticee 1 / PMS-Landmark is in violation of the provisions of Portfolio Managers Regulations, 1993 and KRA Regulations, 2011 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

17) I will now proceed with my findings in each of the alleged violations against Noticee 1 in the SCN dated May 18, 2022.

18) Failure to maintain minimum corpus of clients to minimum requirements –

- a) It was observed from the copy of transactions of clients showing the deployment of funds of clients and redemption of securities/ funds that Noticee 1 redeemed its investments in NCDs in three tranches. The redeemed amount during each redemption was paid back to the clients, which led to reduction in corpus of certain clients to less than rupees twenty five lakhs. Hence, it was alleged that Noticee 1/ PMS-Landmark has violated the provisions of regulation 15(1A) of Portfolio Managers Regulations, 1993.
- b) Noticee 1 has submitted that the obligation under Regulation 15(1A) of the PMS Regulations to not accept funds or securities of clients worth less than INR 25 Lakhs is only limited to the time of onboarding the client / accepting the first single lump-sum investment amount and not on the portfolio manager's ability to return funds in the usual course of portfolio management. Reference was also made to paragraph 3(i) of SEBI Circular No. CIR/IMD/DF/14/2014 dated

Adjudication Order in the matter of Landmark Capital Advisors Private Limited

June 19, 2014 to assert that in other asset management laws, viz. SEBI (AIF) Regulations, 2012, the restriction is upon client's withdrawal of the funds at its discretion and not on the manager's ability to return funds in the usual course of business. Thus, requirement of regulation 15(1A) is only limited to acceptance of funds or securities at inception and not to ensure that minimum investment amount is maintained at the time of returning of funds from time to time to respective clients. Hence, provisions of regulation 15(1A) of Portfolio Managers Regulations, 1993 have not been violated.

- c) As per provisions of regulation 15(1A) of Portfolio Managers Regulations, 1993, a portfolio manager shall not accept from client, funds or securities worth less than twenty five lakh rupees.
- d) I note that PMS-Landmark has redeemed amounts of clients invested in strategy specific debentures, in multiple tranches, on different dates. While these redemptions were made, clients' funds with PMS-Landmark went below the minimum required amount of twenty-five lakh rupees in terms of regulation 15(1A) of the PMS Regulations. Thus, as per PMS Regulations, funds cannot be accepted from investors of amount less than rupees twenty five lakh, which also implied that it shall also be maintained throughout. Also, funds of multiple clients are pooled under AIF business, whereas a portfolio manager invests the funds of clients based on their individual specific objectives. Hence, reference to AIF regulations to contend that the restriction is upon client's withdrawal of the funds at its discretion and not on the manager's ability to return funds in the usual course of business, is incorrect. PMS-Landmark has also asserted that such limits are also meant for the clients, such that they cannot withdraw any amount more than the amount at which clients' funds with portfolio manager reduce to less than twenty five lakhs. It was also submitted that the regulations

do not prevent the portfolio manager to do so by redeeming the amounts at random intervals. I find that this interpretation is not in the spirit of PMS regulations, as it would be unfair to the investors that they are bound by the regulations as they are not allowed to withdraw any amount, while portfolio manager is free to decide upon the redemptions of clients' money. Hence, I find that PMS-Landmark has misinterpreted the regulations. I observe that there is no exemption for redeeming clients' funds beyond the minimum amount of rupees twenty five lakhs. Thus, if the portfolio manager is allowed to redeem beyond the limit of minimum funds or securities to be accepted, it would defeat the purpose of this regulation.

- e) In view of the aforesaid, I find that PMS-Landmark has violated the provisions of regulation 15(1A) of Portfolio Managers Regulations, 1993 by redeeming amounts in multiple tranches to clients, which led to reduction in corpus of certain clients to less than rupees twenty five lakhs.

19) Holding clients' securities in its own name –

- a) It was observed from statement of liquid mutual fund folios that PMS-Landmark invested undeployed fund of clients in liquid funds in its own name with multiple folios. Hence, it was alleged that Noticee 1/ PMS-Landmark, has violated the provisions of regulation 16(8) of Portfolio Managers Regulations, 1993.
- b) PMS-Landmark referred to SEBI Circular No. Cir./IMD/DF-1116/2012 on "Portfolio Managers-Deployment of clients fund in liquid mutual funds" dated July 16, 2012 which states that any short-term deployment of funds in liquid Mutual Funds for the purpose of cash management shall be maintained on the lines as specified by the SEBI Circular no. IMD/DoF-I/PMS/Cir-4/2009 dated June 23, 2009. The latter circular clarifies that portfolio managers may keep the

funds of all clients in a separate bank account maintained by the portfolio manager subject to certain conditions given therein. PMS-Landmark asserted that Regulation 16(8) applies with respect to deployment of funds in accordance with the investment objective and policy of the portfolio management services, and not with respect to short-term deployment of funds in liquid mutual funds for the purpose of cash management, for which SEBI Circular no. IMD/DoF-I/PMS/Cir-4/2009 dated June 23, 2009 is applicable.

- c) It was also submitted that PMS-Landmark has maintained clear segregation of each client's interest in such liquid mutual fund through proper and clear maintenance of back-office records. It has also created internal folios and circulated these folios to the clients along with a statement of account at regular intervals (on a monthly basis). Further, PMS-Landmark has reconciled the client-wise interest in such liquid mutual fund on daily basis. A sample portfolio monthly statement and a copy of internal books showing segregation of each client 's interest was provided in support of its submissions.
- d) Provisions of regulation 16(8) of Portfolio Managers Regulations, 1993 specifies that a portfolio manager shall not hold listed or unlisted securities belonging to the clients/ portfolio account in its own name.
- e) I note that regulation 16(8) clearly states that a portfolio manager shall not hold listed or unlisted securities belonging to clients/ portfolio account in its own name. No distinction has been made herein for temporary short term investments and investments in accordance with investment objectives. PMS-Landmark has also given reference to SEBI Circular no. IMD/DoF-I/PMS/Cir-4/2009 dated June 23, 2009, which clarifies that portfolio managers can keep funds of all clients in a separate bank account, and for doing that, certain

conditions to protect interest of all clients have been specified, like segregation of each clients' funds and proper maintenance of back office records. However, it doesn't state that a portfolio manager can keep clients' short term investments in its own name. Hence, PMS-Landmark's contention is not acceptable. While segregation has been made by PMS-Landmark of clients' funds, I note that securities bought from their funds were held by PMS-Landmark in its own name. I also note that Noticee 1 has admitted that PMS-Landmark was holding clients' securities in its own name.

- f) In view of the above, I find that PMS-Landmark has violated provisions of regulation 16(8) of Portfolio Managers Regulations, 1993.

20) Non-maintenance of records in support of investment transactions –

- a) It was observed that Noticee 1 did not maintain records supporting investment rationale for investments made in Irina Hospitality P Ltd. The same was also admitted by Noticee 1 in its reply to the findings of inspection vide letter dated April 30, 2020. Hence, it is alleged that Noticee 1/ PMS-Landmark has violated the provisions of regulation 17(1)(e) of Portfolio Managers Regulations, 1993.
- b) It was submitted that investment into Irina Hospitality P Ltd. was made through a secondary transaction wherein non-convertible debentures were transferred from the Landmark Return Multiplier Fund, a scheme of Landmark Opportunity Fund ("Landmark AIF") managed by Landmark Capital Advisors Private Limited to the respective clients. A separate Investment Committee Note was circulated for Landmark AIF and PMS-Landmark respectively. The resources involved in the decision- making for the Landmark AIF and that for the portfolio management division were common and the due diligence and the data, facts and opinion leading to that investment decision also remained the same. Hence

there was no violation of provisions of regulation 17(1)(e) of the PMS Regulations.

- c) As per provisions of regulation 17(1)(e) of Portfolio Managers Regulations, 1993, a portfolio manager shall maintain records in support of every investment transaction or recommendation indicating data, facts and opinion leading to that investment decision.
- d) I note that PMS-Landmark, in its reply to the inspection findings, vide letter dated April 30, 2020, inter alia submitted that *"All requisite records and documents were maintained in respect of the investments made by the PMS. Investment in Irina Hospitality was made through secondary transaction where the NCD units were transferred from AIF to the respective PMS Clients. Proper supporting documents were made and approved by the investment committee for the same. The IC note and the minutes for the same were provided. Since same resources, investment team and administration was involved, a separate documentation of the same was not done owing to the fact the ideals, due diligence and logic of investment remain same."* (emphasis supplied by underlining relevant text). I also note that documents submitted by PMS-Landmark in support of its above response were prepared for AIF.
- e) From the above submissions made by PMS-Landmark, I note that it has in fact, accepted that documents were not separately maintained for PMS-Landmark. In its reply to inspection findings vide letter dated April 30, 2020, PMS-Landmark submitted that since the same investment team was involved, separate documentation was not done. However, along with its reply to the SCN vide letter dated July 05, 2022, PMS-Landmark submitted a copy of the IC Note prepared for PMS business. I observe that there is only one change in the two

set of Investment Committee Notes (IC Note), which is that the stamp on one set is of “AIF” and on another is of “PMS”. I note that PMS-Landmark has not specified any reasons as to why the IC Note pertaining to PMS was not provided while replying to inspection findings. Hence, I find the submission to the SCN was an afterthought, as IC Note pertaining to PMS was admittedly not prepared by PMS-landmark.

- f) PMS-Landmark has submitted that it had done proper due diligence for the investment opportunity. However, the allegation at present is of not maintaining proper investment records, as PMS-Landmark did not maintain separate investment rationale in the records of PMS, which should have been done, as AIF and PMS are two different segments of business, handled by Noticee 1.
- g) Thus, by not maintaining separate documentation for investment in Irina Hospitality P. Limited, PMS-Landmark has violated provisions of regulation 17(1)(e) of Portfolio Managers Regulations, 1993.

21) Failure to deploy funds received from clients in reasonable time –

- a) From the copy of client transaction summary as submitted by PMS-Landmark during inspection, it was observed that funds were returned to clients without being deployed in NCDs and in case of some clients, funds were deployed in NCDs after substantial delay, as tabulated below:

Clients whose funds were kept Un-deployed and returned back later-

Sr. No	Investor Name	Date of on boarding	Gross Amount (in Rs.)	Date of Investment in MF	Date on which amount is returned back	Time to return the un-deployed funds (in days)
1	Sangeeta Dinesh Parmar	12/May/17	2,500,000	18/May/17	27/12/2017	229
2	Kapil Raj Dixit	7/Dec/17	2,800,000	8/Dec/17	06/12/2018	364
3	Rajesh Kumar Paida	30/Dec/17	5,000,000	2/Jan/18	14/12/2018	349
4	Puja Bhalla	24/Jul/18	2,565,000	25/Jul/18	31/12/2018	160
5	Vinish Kathuria	19/Jul/18	2,500,000	20/Jul/18	04/02/2019	200
6	Kavita Mandal	2/Aug/18	2,500,000	3/Aug/18	04/02/2019	186
7	Chunduri Venkateswara Rao	27/Jun/18	2,500,000	28/Jun/18	27/02/2019	245
8	Sanaa Rahman	16/Jul/18	2,536,875	17/Jul/18	27/02/2019	226
9	Savita Shirmal	30/Jul/18	2,500,000	31/Jul/18	27/02/2019	212
10	Mohan P R	31/Aug/18	3,088,500	3/Sep/18	27/03/2019	208
11	Mohan P R	31/Aug/18	5,147,500	28/Sep/18	27/03/2019	208
12	Kanta Panchnanda	21/Jun/18	4,000,000	25/Jun/18	26/04/2019	309

- From the table above, it can be noted that for the client Kapil Raj Dixit, PMS-Landmark completed onboarding on December 07, 2017 and rupees twentyeight lakh were received on December 08, 2017. However, the funds remained undeployed for around 364 days, i.e. almost an year, and were later returned to the client on December 06, 2018. In the same way, funds of eleven other clients listed above remained undeployed for an unreasonably long duration of time and later returned to the clients.

Clients whose funds were deployed with substantial delay-

Sr. No	Investor Name	Date of on boarding	Gross Amount (in Rs.)	Date of Investment in MF	Date of Investment NCD	Time to deploy funds (in days)
1	Sathyabama Venkatmani	12/Jun/17	2,500,000	14/Jun/17	7/Mar/18	268
2	Sonika Lakhera	2/Jun/17	2,500,000	5/Jun/17	7/Mar/18	278
3	Balakrishnan Sreenivasan	29/Sep/17	2,800,000	11/Oct/17	13/Apr/18	196
4	Sudhir Krishan Ahluwalia	10/Oct/17	2,800,000	13/Oct/17	13/Apr/18	185
5	Ashish Kumar Saxena	4/Oct/17	2,500,000	11/Oct/17	13/Apr/18	191
6	Navneet Goel	4/Oct/17	3,000,000	11/Oct/17	13/Apr/18	191
7	Manoj Madhusudan Joshi	19/Oct/17	3,600,000	23/Oct/17	13/Apr/18	176
8	David Samuel Abraham	1/Nov/17	2,500,000	3/Nov/17	13/Apr/18	163
9	Ashish Ashok Warde HUF	16/Nov/17	2,500,000	17/Nov/17	13/Apr/18	148
10	Jyotsna Kukreti Dobriyal	23/Nov/17	2,500,000	24/Nov/17	13/Apr/18	141
11	Asif Saifu Moonim	13/Dec/17	3,000,000	14/Dec/17	13/Apr/18	121
12	Swethambari Rangarajan	3/Mar/18	2,500,000	5/Mar/18	13/Apr/18	41
13	Devi Jagdish Mirji	12/May/17	2,500,000	18/May/17	7/Mar/18	299
14	Meenu Malhotra	12/May/17	2,500,000	18/May/17	7/Mar/18	299
15	Sutapa Ghosh	16/May/17	2,500,000	18/May/17	7/Mar/18	295
16	Vilas Pandurang Hiremani	1/Jun/17	2,500,000	5/Jun/17	7/Mar/18	279
17	Subha Sudhir Kaji	1/Jun/17	4,500,000	4/Jun/17	7/Mar/18	279
18	Kamesh Kumar Gunupur	3/Jun/17	2,500,000	5/Jun/17	7/Mar/18	277
19	Geetha Rangan	5/Jun/17	3,700,000	6/Jun/17	7/Mar/18	275
20	Shyam Sunder Gupta	8/Jun/17	2,500,000	11/Jun/17	7/Mar/18	272

Sr. No	Investor Name	Date of on boarding	Gross Amount (in Rs.)	Date of Investment in MF	Date of Investment NCD	Time to deploy funds (in days)
21	Jaya Narayan	11/Apr/18	2,533,324	12/Apr/18	18/Apr/18	7
22	Raviprasad Swaminathan Cadambi	28/Jun/17	2,500,000	29/Jun/17	7/Mar/18	252
23	Ashish Arun Joshi	15/Jul/17	2,500,000	18/Jul/17	7/Mar/18	235
24	Francis Pelagio Candes	31/Jul/17	2,500,000	2/Aug/17	7/Mar/18	219
25	Samyuktha Reddy Juturu	26/Oct/17	5,000,000	27-Oct-17	7/Mar/18	132

- From the table above, it can be noted that client Subha Sudhir Kaji was onboarded on June 01, 2017 and rupees forty five lakh were received on June 04, 2017. However, funds were invested in non-convertible debentures on March 07, 2018, i.e. after 279 days, which is an unreasonably long period. Similarly, funds were deployed with substantial delay for other 24 clients listed above.

b) It was also observed that PMS-Landmark invested clients' money into liquid mutual funds for a period ranging from five to twelve months, and afterwards, returned the clients' money on their request owing to delay in deployment of funds in NCDs. Thus, there was significant delay in deploying funds of clients (ranging from 0.2 to 10 months from the date of on-boarding).

c) Hence, it is alleged that the Noticee 1/ PMS-Landmark has violated the provisions of regulation 13 of Portfolio Managers Regulations, 1993 read with Clause 2 of Code of Conduct as specified in Schedule III by not adhering to the requirement of deploying client funds at the earliest possible time.

d) Noticees 1/ PMS-Landmark submitted that while undertaking any deployment decisions, PMS-Landmark has ensured that the investment is within the investment objective and policy as agreed with the client. It has rendered the

best possible advice by having regard to clients' needs and his own professional skills without rushing into a transaction, which may otherwise be counter-productive to the interest of the clients. In certain cases, several issues came to light upon due diligence of the investee company, and in certain cases, an unexpected change in market situation rendered investment options unreasonable. PMS-Landmark consciously chose to not deploy funds in such investments and ended up expending lots of time and resources, which caused delay in making investment of clients' funds.

- e) Clause 2 of schedule III of Portfolio Managers Regulations, 1993 requires a portfolio manager to deploy funds received from clients for investment purpose and also repay the money due and payable, at the earliest possible.
- f) I note that PMS-Landmark has not disputed the above facts that for 12 clients, funds were not deployed and later returned to the clients; and in case of 25 clients, funds were deployed with substantial delay. PMS-Landmark has provided reasons for delay, that deployment of funds got delayed as issues came to light while conducting due-diligence of the investee company, etc. However, PMS-Landmark has not provided any reasons as to why it did not return the funds to the clients after passage of reasonable time within which it should have deployed their funds. Also, it has not made any submissions along with evidence that it had offered to return the clients' funds after a reasonable duration, as this would have shown that PMS-Landmark was diligent in its conduct and acted in the interest of investors. I note that not returning the clients' funds in the absence of suitable investment opportunities was not in the interest of investors.

- g) Therefore, I find that PMS-Landmark has violated provisions of regulation 13 of Portfolio Managers Regulations, 1993 read with Clause 2 of Code of Conduct as specified in Schedule III by not adhering to the requirement of deploying client funds at the earliest possible time.

22) Provisions allowing outsourcing of core activities –

- a) It was alleged that the Noticee 1/ PMS-Landmark has violated the provisions of regulation 13 of Portfolio Managers Regulations, 1993 read with Clause 3 of Code of Conduct and clause 1 and 5 of SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011 as specified in Schedule III as it was observed that clause 21 of the Portfolio Managers Agreement states that PMS-Landmark may act upon any advice or information obtained from other outside entities and it shall not verify such advice or information obtained and further not be liable for any loss suffered in this regard. Clause 21 of the portfolio management agreement reads as below:

“The Portfolio Manager may act upon any advice of or information obtained from any bankers, accountants, brokers, professional agents or other persons acting as agents or advisers of the Portfolio Manager and the Portfolio Manager shall not be bound to supervise the acting of any such persons nor to verify the advice or information obtain there from and the Portfolio Manager shall not be liable for anything bonafide done or omitted or suffered in reliance upon such advice or information nor be responsible for the consequences of any mistake or oversight or error of judgment on the part of the Portfolio Manager or any attorney or agent of other person appointed by it hereunder.”

- b) Above clause in the agreement permits portfolio manager to outsource its core activity and thereby exempt them from the responsibility of rendering high

standards of service, exercising due diligence, ensuring proper care and exercising independent professional judgement.

- c) PMS-Landmark submitted that intention of clause 21 of Portfolio Management Services agreement was not to outsource core activities, instead to obtain services of certain professionals who are in the business of providing services very distinct from the core activity of PMS-Landmark. Also, PMS-Landmark has never outsourced its core activities, i.e. investment.
- d) Clause 3 of schedule III of Portfolio Managers Regulations, 1993 and clause 1 of SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011 require a portfolio manager to render high standards of service at all times and exercise due diligence and ensure proper care in their operations. Clause 5 of the said circular specifies that a portfolio manager who is desirous of outsourcing its activities shall not outsource its core activities.
- e) PMS-Landmark has submitted that it never outsourced its core functions and the instant clause was purposed to obtain services of certain professionals who are in the business of providing services very distinct from the core activity of PMS-Landmark. I note that the portfolio manager, before taking up an assignment of management of funds or portfolio of securities on behalf of the client, enters into an agreement in writing with the client, clearly defining the inter se relationship and setting out their mutual rights, liabilities and obligations relating to the management of funds or portfolio of securities, containing the details as specified in Schedule IV of the SEBI (Portfolio Managers) Regulations, 1993. Hence, the document shall be clear and explicit in its wordings.

- f) I note that Regulation does not allow PMS to outsource any of its core activities. Further, PMS-Landmark contended that such clause does not mention that it was intended to outsource daily and routine operational activities. However, it is observed that clause 2.18 in the said agreement allows the PMS-Landmark “to delegate the performance of its duties, discretions, obligations, any of powers and authorities here under” and this purports to outsource the core activities. Keeping such provision in the agreement allows the PMS-Landmark to do so which is against the integrity and fairness on part of the PMS-Landmark.
- g) In view of the aforesaid, I find that PMS-Landmark has violated the provisions of regulation 13 of Portfolio Managers Regulations, 1993 read with Clause 3 of Code of Conduct and clause 1 and 5 of SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011 as specified in Schedule III.

23) **Failure to maintain arm’s length relationship between handling activities as a portfolio manager and manager of AIF –**

- a) It was alleged that Noticee 1/ PMS-Landmark has violated the provisions of regulation 13 of Portfolio Managers Regulations, 1993 read with Clause 1 and 12(a) of Schedule III - Code of Conduct read with clause 3 of SEBI RPM Circular No.1 (2002-20003) dated September 17, 2002 by not maintaining arm’s length relationship in terms of utilization of manpower between activities as portfolio manager and as a manager of AIF. Noticee 1 was registered under PMS Regulations and also under AIF Regulations. It was observed that the team which was handling investment, operations and compliance of Portfolio management business was also handling investment, operations and compliance of AIF business. Hence, it was alleged that arm’s length relationship

was not being maintained by Noticee 1 in terms of manpower between the activities of PMS-Landmark as portfolio manager and manager of AIF.

- b) Noticee 1 submitted that conjoint reading of Regulation 6(c) of the PMS Regulations and the Clause 3 of RPM Circular, the obligation to ensure absolute arms' length relationship arises wherein persons directly or indirectly connected with the applicant have been granted registration as a portfolio manager under the PMS Regulations and conditions contained under RPM Circular cannot be extended to investment management services offered in relation to an alternative investment funds which is regulated through a distinct regulation i.e., Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012. Hence, PMS-Landmark was not under an obligation to maintain a strict segregation between PMS and AIF resources per the PMS Regulations. It was further submitted that PMS-Landmark has always endeavored to achieve arm's length relationship between the activities of the alternative investment fund and of the portfolio management services and has ensured that investor interest has not been compromised.
- c) Clause 1 and 12(a) of schedule III of Portfolio Managers Regulations, 1993 require a portfolio manager to render high standards of service at all times and exercise due diligence and ensure proper care in their operations and also to abide by SEBI Act, and all the rules and regulations made thereunder, and guidelines/ schemes issued by SEBI. Clause 3 of RPM CIRCULAR NO.1 (2002-2003) dated September 17, 2002 clarifies that SEBI may grant registration under Portfolio Managers Regulations, 1993 to an applicant, notwithstanding the fact that another entity from the same group has already been granted registration herein, provided that certain conditions are fulfilled,

including that there is absolute arm's length relationship with reference to their obligations.

- d) I note that PMS-Landmark has not disputed, and in fact, it has expressly stated that the team which is handling the investment, operations and compliance of PMS-Landmark is also handling the investment, operations and compliance of AIF. I also find that Noticee 1's submission that clause 3 of aforesaid RPM circular speaks about granting registration under PMS Regulations to another entity in the same group, and hence not about granting registration to one entity under two different regulations, is acceptable.
- e) When an entity conducts its business in multiple segments, wherein both are regulated under different regulations, and serving to different clients, it is under obligation to keep the activities separate and segregated. The entity is expected to build an ethical wall, to prevent exchange of information or communication among different segments (PMS and AIF in the present case) that could lead to conflicts of interest, and affect independent professional judgement and decision making, which may adversely impact the interests of investors/ clients of both the segments. In this regard, I find it relevant to quote Clause 6.2 of Schedule III of Code of Conduct under Intermediaries Regulations, 2008, which reads, *"An Intermediary also registered with the Board in any other capacity/ category shall endeavour to ensure that arm's length relationship is maintained in terms of both manpower and infrastructure between the activities carried out as an Intermediary and other permitted activities."*
- f) In view of the aforesaid, I find that PMS-Landmark has violated provisions of regulation 13 and Clause 1 of Schedule III of Portfolio Managers Regulations, 1993 by not maintaining arm's length relationship in terms of utilization of

personnel between the activities of PMS-Landmark as portfolio manager and as manager of AIF.

24) **Outsourcing of activity of carrying out KYC requirements and failure to obtain registration with CKYC and KRA –**

- a) It was alleged that Noticee 1/ PMS-Landmark has violated the provisions of regulation 16(a) and (d) of KRA Regulations, 2011. It was observed that KYC procedure for clients of PMS-Landmark was carried out by Karvy, i.e. it was outsourced to Karvy. It was claimed by PMS-Landmark at the time of inspection that it has verified with KRA (KYC Registration Agency) and CKYC (Central KYC) as a proof of verification of KYC. However, it was alleged that Noticee 1 had not downloaded the copy of KYC from KRA or CKYC as a proof of verification of KYC. It was also observed that PMS-Landmark is not registered with any one of the five KRAs or CKYC.
- b) Noticees 1, in its submissions, referred to Paragraph 2.2.6 of SEBI Circular No. SEBII HO/ MIRSD/ DOS3/ CIR/ P/ 20 18/ 104 dated July 04, 2018 on "Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under" and submitted that an intermediary may rely on a third party, provided they comply with the provisions KRA Regulations and guidelines issued thereunder from time to time, for the purpose of client due diligence and the same is not prohibited under applicable laws. Further, all the clients onboarded by PMS-Landmark already had KYC identifiers and the same were downloaded from the KRA database by Karvy on behalf of PMS-Landmark. Records of such downloads have been documented for internal record- keeping and copy of the same has been provided.

- c) Further, it was acknowledged that there has been an inadvertent omission on their part as PMS-Landmark was not registered with any one of the five KRAs or CKYC
- d) As per regulations 16(a) and (d) of KRA Regulations, 2011, an intermediary shall perform initial KYC/ due diligence of the client, upload the KYC information with proper authentication on the system of the KRA, furnish the scanned images of the KYC documents to the KRA, and retain the physical KYC documents. Also, the intermediary shall have the ultimate responsibility for the KYC of its clients, by undertaking enhanced KYC measures commensurate with the risk profile of its clients.
- e) I note that the purpose of KYC is to ensure that the client is who they say they are. It helps businesses to build trust with their clients, and also helps in preventing illicit activities, including money laundering. Also, it is mandatory for the portfolio manager to perform KYC of its clients and update it regularly. Thus, it is a part of core activity of a portfolio manager.
- f) It is relevant to refer to clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011, which provides for '*Activities that shall not be outsourced*', and inter alia states that '*regarding KYC requirements, the intermediaries shall comply with the provisions of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011 and Guidelines issued thereunder from time to time.*' I note that reference of KYC is expressly made in the context of activities that shall not be outsourced.

- g) Proceeding to provisions of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011, I note that regulations 16(a) and (d) requires the intermediary to perform initial KYC/ due diligence of the client, upload the KYC information with proper authentication on the system of the KRA, furnish the scanned images of the KYC to the KRA, and retain the physical KYC documents. PMS-Landmark outsourced the KYC function to Karvy Capital Limited, another entity. Further, as admitted by PMS-Landmark, it was not registered with CKYCR or any of the 5 KRAs. Hence, aforesaid regulations have not been complied with.
- h) PMS-Landmark referred to Paragraph 2.2.6 of SEBI Circular No. SEBI/HO/ MIRSD/ DOS3/ CIR/ P/ 20 18/ 104 dated July 04, 2018 which states that an intermediary may rely on a third party, provided they comply with the provisions KRA Regulations. It was issued by SEBI as guidelines on Anti Money Laundering Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under. I find reference of this circular as irrelevant as the said circular is for the purpose of obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and rules framed thereunder and not in context of the alleged violations. I find that PMS-Landmark has, in its submissions, nowhere referred to SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011, and also, it has plainly admitted that there has been an inadvertent omission on its part as it was not registered with any of the five KRAs or CKYCR.
- i) In view of the aforesaid, I find that PMS-Landmark has violated provisions of regulations 16(a) and (d) of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011.

25) Failure to redress investor grievances within 30 days of receipt of grievances

- a) It was alleged that Noticee 1/ PMS-Landmark has violated the provisions of regulation 9A(1)(c) read with 15(6) of Portfolio Managers Regulations, 1993, as in two cases observed during inspection, the investor complaints were resolved after 30 days from the date of receipt of the said complaints.
- b) It was observed that PMS-Landmark received four complaints during the inspection period, out of which two complaints were resolved later than 30 days from the date of receipt of complaint. The complaints were regarding non-deployment of funds by PMS-Landmark and the complainants were clients, requesting repayment of their funds.
- c) The details of the complaints are as tabulated below:

S no	Client Name	Nature of Complaint	Receipt date	Resolve Date	Payout Amount Rs.	Difference
1	Kanta Panchnanda	Non deployment of funds	08/02/2019	26/04/2019	3,882,000.00	77
2	Kavita Mandal	Non deployment of funds	08/01/2019	04/04/2019	2,548,470.33	86

- d) Noticees 1 submitted that complaint received from Kavita Mandal was resolved within 27 days, i.e. on February 04, 2019, by way of return of funds. With respect to complaint from Kanta Panchnanda, complaint was received on February 08, 2019, funds were returned on April 26, 2019, but adequate steps were being taken by PMS-Landmark within the stipulated time. Thus, it is only the final solution, which was done later, but the complaint was resolved in time.
- e) As per regulations 9A(1)(c) and 15(6) of Portfolio Managers Regulations, 1993, a portfolio manager shall ensure proper and timely handling of complaints and take adequate steps for redressal of grievances of the investors within one month of date of receipt of the complaint.

- f) I note that clients Kanta Panchnanda and Kavita Mandal made complaints regarding non deployment of their funds within reasonable time or exit from the fund. Thus, redressal of the complaints could only be through refund of their funds, which was made later than one month of receipt of the complaints. Also, PMS-Landmark has not disputed that the refund was made later than one month from receipt of the complaint.
- g) I note that its submission that PMS-Landmark had redressed the complaints within a month's period, and just refund of money was done later, is unacceptable, as redressal of these complaints could only be through refund of clients' funds.
- h) Therefore, I find that PMS-Landmark has violated provisions of regulation 9A(1)(c) read with 15(6) of Portfolio Managers Regulations, 1993.

26) Therefore, I find that PMS-Landmark has violated following provisions:

- a) Regulation 15(1A) of Portfolio Managers Regulations, 1993
- b) Regulation 16(8) of Portfolio Managers Regulations, 1993.
- c) Regulation 17(1)(e) of Portfolio Managers Regulations, 1993.
- d) Regulation 13 read with Clause 2 of Code of Conduct as specified in Schedule III of Portfolio Managers Regulations, 1993
- e) Regulation 13 read with Clause 3 of Code of Conduct and clause 1 and 5 of SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011 as specified in Schedule III of Portfolio Managers Regulations, 1993.
- f) Regulation 13 and Clause 1 of Schedule III of Portfolio Managers Regulations, 1993.

- g) Regulations 16(a) and (d) of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011.
- h) Regulation 9A(1)(c) read with 15(6) of Portfolio Managers Regulations, 1993.

ISSUE I-B - Whether Noticees 2 to 8 are in violation of the provisions of Portfolio Managers Regulations, 1993 and KRA Regulations, 2011 given in paragraph 26 above?

27) PMS-Landmark has submitted that Noticees 2, 3, 4, and 6 were non-executive directors during the inspection period, and were not involved in day to day activities of PMS-Landmark. Noticee 3 has also informed vide letter dated August 26, 2022 that he was non-executive director of PMS-Landmark. In this regard, Noticee 3 has submitted Form DIR-12 in support of his submissions vide mail dated August 29, 2022. From the aforesaid form DIR-12, it was observed that apart from Noticee 3, Noticee 5 was also non-executive director during the inspection period.

28) Here, I would like to refer section 27 of the Securities and Exchange Board of India Act, 1992 which provides for the offences by companies and reads in relevant part as under:

Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed

without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

29) Noticee 4 has placed reliance on Hon'ble Securities Appellate Tribunal ("SAT") order in the matter of Videocon International Limited v. Securities and Exchange Board of India, Rahul H. Shah vs. Securities and Exchange Board of India, and various other case laws. I also find it relevant to refer judgment of Hon'ble Supreme Court in Sunil Bharti Mittal v. Central Bureau of Investigation dated January 09, 2015, wherein Hon'ble Supreme Court inter alia observed that

"No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect."

30) There is no material available on record to show that Noticees 2, 3, 4, 5 and 6 were involved in active management or day to day affairs of the Company. In view of the aforesaid, the allegation of contravention of provisions of PMS Regulations and

KRA Regulations mentioned in paragraph 26 above, are not established against Noticees 2, 3, 4, 5 and 6.

31) Noticee 7 is promoter and director of PMS-Landmark. He is also CEO and Principal Officer of PMS-Landmark. I also note that Noticee 8 was non-independent director. From DIR-12 submitted by Noticee 3 vide mail dated August 29, 2012, it is observed that Noticee 5 was an executive director of PMS-Landmark during the inspection period. Further, from the emails exchanged among officials of PMS-Landmark, available on record, I note that Noticee 8 was actively involved in the day to day affairs of PMS-Landmark. Hence, I find it unlikely that Noticees 7 and 8 were unaware regarding conduct of the business by PMS-Landmark. Thus, Noticees 7 and 8, being involved in day to day activities of PMS-Landmark and by virtue of their positions in the Board have violated provisions of PMS Regulations and KRA Regulations given below:

- Regulation 15(1A) of Portfolio Managers Regulations, 1993
- Regulation 16(8) of Portfolio Managers Regulations, 1993.
- Regulation 17(1)(e) of Portfolio Managers Regulations, 1993.
- Regulation 13 read with Clause 2 of Code of Conduct as specified in Schedule III of Portfolio Managers Regulations, 1993
- Regulation 13 read with Clause 3 of Code of Conduct and clause 1 and 5 of SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011 as specified in Schedule III of Portfolio Managers Regulations, 1993.
- Regulation 13 and Clause 1 of Schedule III of Portfolio Managers Regulations, 1993.
- Regulations 16(a) and (d) of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011.
- Regulation 9A(1)(c) read with 15(6) of Portfolio Managers Regulations, 1993.

ISSUE II - Do the violations, if any, attract penalty under section 15C and section 15HB of the SEBI Act, 1992?

32) I note that the above violations make the Noticees 1, 7 and 8 liable for monetary penalty under section 15C and section 15HB of the SEBI Act, 1992, the text of which is reproduced hereunder:

Penalty for failure to redress investors' grievances.

15C. *If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

Penalty for contravention where no separate penalty has been provided.

15HB. *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 shall not be less than one lakh rupees but which may extend to one crore rupees.*

33) In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation*

which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.”

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

34) While determining the quantum of penalty under Section 15C and Section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 respectively, which read as under:

SEBI Act, 1992

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.

35) In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticees 1, 7 and 8. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticee. Further, as per the available records, it is observed that Noticees 1, 7 and 8 have not been penalised earlier for any of the aforesaid violations. Hence, violations are not repetitive in nature. However, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee 1, with its directors Noticees 7 and 8, was under statutory obligation to abide by the provisions of the SEBI Act and all the

applicable regulations, which it failed to do. Such disregard for the provisions of law governing the functioning of such intermediaries, calls for an appropriate penalty which should act as a deterrent.

ORDER

36) Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty upon the Noticees.

Sr. No.	Name of Noticee	Provisions violated	Penal Provisions	Penalty
1	LANDMARK CAPITAL ADVISORS PRIVATE LIMITED PAN: AACCL4482A	a) Regulation 15(1A) of Portfolio Managers Regulations, 1993 b) Regulation 16(8) of Portfolio Managers Regulations, 1993. c) Regulation 17(1)(e) of Portfolio Managers Regulations, 1993.	Section 15HB of SEBI Act, 1992 (for violations mentioned in (a) to (g))	₹5,00,000 (Rupees Five Lakhs only) to be payable jointly and severally by Noticees no. 1, 7 and 8 - under section 15HB of SEBI Act, 1992
3	Ashish Kumar Joshi PAN: AAFPJ2088L	d) Regulation 13 read with Clause 2 of Code of Conduct as specified in Schedule III of Portfolio Managers Regulations, 1993		
4	Kedar Deshpande PAN: AAMPD7153P	e) Regulation 13 read with Clause 3 of Code of Conduct and clause 1 and 5 of SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011 as specified in Schedule III of Portfolio Managers Regulations, 1993.		
			Section 15C of SEBI Act, 1992 (for violations mentioned in (h))	₹2,00,000 (Rupees Two Lakhs only) to be payable jointly and severally by Noticees no. 1, 7 and 8 - under

Sr. No.	Name of Noticee	Provisions violated	Penal Provisions	Penalty
		f) Regulation 13 and Clause 1 of Schedule III of Portfolio Managers Regulations, 1993. g) Regulations 16(a) and (d) of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011. h) Regulation 9A(1)(c) read with 15(6) of Portfolio Managers Regulations, 1993.		section 15C of SEBI Act, 1992

37) The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

38) The aforesaid Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department - DRA-1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticees shall also provide the following details while forwarding DD / payment information:

- a) Name and PAN of the Noticee
- b) Name of the case / matter

Adjudication Order in the matter of Landmark Capital Advisors Private Limited

- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

39) In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

40) In terms of Rule 6 of the SEBI Adjudication Rules, 1995 and Rule 6 of SCRA Adjudication Rules, 2005, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date: August 30, 2022

Place: Mumbai

BARNALI MUKHERJEE

Adjudicating Officer