**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/AA/AR/2019-20/5280]**

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

*In respect of*

**Lalkar Securities Pvt. Ltd**
**(CIN: U65990MH1997PTC105421)**

*In the matter of*
**ADF Foods Ltd**

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## BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the suspected insider trading by the clients of the stock broker, Lalkar Securities Pvt. Ltd (hereinafter referred to as '**Lalkar Securities'** / '**Noticee'**) in the scrip of ADF Foods Ltd (hereinafter referred to as '**ADF'**). During the course of investigation, SEBI observed certain irregularities on the part of the Noticee while executing trades on behalf of its clients viz. Ms. Pallavi Navinchandra Mehta (hereinafter referred to as '**Ms. Pallavi**') and Ms. Shefali Bhupendra Mehta (hereinafter referred to as '**Ms. Shefali**'), during the period from May 21, 2016 to July 27, 2016 (hereinafter referred to as '**Investigation period'**).
2. It is observed that the Noticee failed to categorically confirm the identity of the person who had placed the specific orders on behalf of its clients viz. Ms. Pallavi

and Ms. Shefali and also failed to provide the copy of the recordings of order placement in the account of its aforesaid clients, thereby, failing in exercising due skill, care and diligence in the conduct of its business in violation of provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II r/w Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as '**Stock Brokers Regulations'**).

## APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer in the matter vide communique dated March 12, 2019, under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with sections 15I(1) and 15I(2) of the SEBI Act, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules and section 15HB of the SEBI Act.

## SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice no. A&E/EAD-1/AA/ASR/11390/2019 May 03, 2019 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15HB of the SEBI Act, for the violations alleged to have been committed by it. Briefly, the major allegations made in the SCN are mentioned below:
   a. *It is observed that SEBI vide its letter dated October 27, 2017, advised Lalkar Securities to submit relevant trading details of the above said entities, inter-alia, including order placement details and copy of recording of the order placement. It is alleged that Lalkar Securities, vide its reply letter dated*

*November 24, 2017 (Annexure B), submitted that on behalf of Ms. Pallavi and Ms. Shefali, the orders for trading in the scrip of ADF during Investigation period were placed by Mr. Navinchandra Mehta (hereinafter referred to as 'Navin'), Mr. Abhishek Mehta (hereinafter referred to as 'Abhishek') and Mr. Bhavesh Thakkar (hereinafter referred to as 'Bhavesh') from the telephone numbers 9820710000, 9820417842 and 9323524675. However, it is alleged that the Noticee failed to categorically confirm the identity of the person who had placed the specific orders on behalf of the clients. Noticee also, allegedly, failed to provide the copy of the recordings of order placement in the account of its client and stated that the recording of the order placement is maintained by it only till the successful completion of the trade and settlement of the particular order.*

b. *It is observed that w.r.t. the orders placed in the account of Ms. Shefali and Ms. Pallavi during the Investigation period, vide SEBI letters dated March 01, 2018 and May 10, 2018, Lalkar Securities was once again advised to provide the relevant details viz. mode of placement of order(s), telephone/mobile numbers from which the order(s) were placed, name of person(s) placing and taking the order(s), copy of voice recordings of the order placement and the relevant transcripts, in chronological order. However, it is alleged that in response to the aforesaid letters, the Noticee submitted vague and evasive reply and reiterated that they were unable to provide the chronological order of the transaction as the same were only maintained till the successful execution and were removed after settlement of the transaction and disposal of dispute, if any, in accordance with the general practice followed by the Noticee.*

c. *It is observed that vide its email dated May 16, 2018 (Annexure C), Lalkar Securities submitted that, it has not received any customer complaints/grievances or disputes in last several years and therefore they did not see any reason to maintain records extensively. Noticee further submitted that the calls would "simply get deleted" after a certain period and* *it did not have any voice recordings for the orders placed in the account of Ms. Pallavi and Ms. Shefali. An example of the vague and/or evasive replies submitted by the Noticee to SEBI, is mentioned below:*

| *Sr.* | *Date* | *Order No.* | *Mode Of Placement* | *Name of the Persone Placing Order* | *Mobile No* | *Name of Person Taking Order* |
|---|---|---|---|---|---|---|
| *1* | *01/09/2016* | *3984732* | *These orders were received from the numbers 9820710000/9820417842/9323524675. As we do not have the recording, It is not possible to ascertain as to who had called and from which number. Kindly refer to item no. 2 of our reply dated 24/11/17* | | | *Vijay Bomble/Brijesh Shah/APPPB1202D/BIIPS3763H* |

d. *It is observed that the Noticee had submitted to SEBI that three common entities viz., Mr. Navin, Mr. Bhavesh and Mr. Abhishek were placing order(s) on behalf of both Ms. Shefali and Ms. Pallavi in the scrip of ADF during the Investigation period. It is however alleged that as per the authorization letters related to the trading account of Ms. Pallavi and Ms. Shefali, only Mr. Navin and Mr. Bhavesh were authorized to place orders on behalf of Ms. Pallavi and only Mr. Abhishek and Mr. Navin were authorized to place orders on behalf of Ms. Shefali. In view of the above, it is alleged that the information provided by the Noticee is conflicting in nature as only two entities could place order(s) in the respective trading accounts of Ms. Shefali and Ms. Pallavi and not three, as submitted by the Noticee to SEBI.*

e. *It is observed that Lalkar Securities has mentioned that the voice recordings get deleted from their records after a certain period has elapsed from the execution of trade as the same is subject to disposal of any dispute raised by its client.*

5. *It is expected of a prudent Stock Broker that basic order placement details viz., name of person placing the order, telephone number used for order placement from which the order was placed etc. should be readily available with the broking entity. Therefore, it is alleged that in view of the unavailability of basic details relevant to order placement without providing any appropriate*

*reasons, Noticee has failed to exercise due skill, care and diligence in the conduct of its business as Stock Broker. Therefore, it is alleged that Noticee has violated provisions of Clause A (2) of the Code of Conduct for Stock Brokers Regulations as specified under Schedule II r/w Regulation 9 of Stock Broker Regulations.*

6. The Noticee vide its letter dated May 31, 2019 requested for additional time for submission of reply in the matter, which was granted. Thereafter,the Noticee vide letter dated July 22, 2019, once again requested for additional time for submission of reply in the matter. Subsequently, the Noticee filed its reply to the SCN vide letter dated August 16, 2019 and made following submissions:

    a. *To your allegation, we submit that vide our letter dated 24/11/2017 in point no 2. we have already categorically stated that the orders used to be received on behalf of Pallavi Navinchandra Mehra and Shefali Bhupendra Mehta from Mr. Navinchandra Mehra, Mr. Abhishek Mehta and Mr. Bhavesh Thakkar from telephone numbers 9820710000, 9820417842, and 9323524675". Further, along with our letter dated 05/01/2018 we have also submitted the authorization letters from Shefali Bhupendra Mehta and Pallavi Navinchandra Mehta wherein they have confirmed that Abhishek Mehta and Navin Chandra Mehta were authorized to place orders for Shefali Bhupendra Mehta and Navin Mehta and Bhavesh Thakkar were authorized to place order for Pallavi Navin Mehta. So, it is crystal clear as to who was authorized to place orders for whom and hence the allegation incorrect. It is well understood that only people who were authorized to place orders would have placed the order.*
    b. *Vide your letter dated 10th May 2018, despite of giving all details and submissions you have communicated that our replies relating to order placement in respect of trades of the said clients are vague and/or evasive and generic in nature and to submit the referenced and specific detailed information, true and complete in nature and you further asked us to provide*

*mode of placement of order along with relevant details in the format mentioned in the letter and again in spite of our earlier replies and clarification you asked for voice recordings of the order placement. To the said letter we have submitted the information as called for in the format. We would further like to clarify that time and again we have provided all the relevant details and information in clear terms. The said replies are specific to your queries and not vague or evasive or generic in nature. We still fail to understand how clear and specific details such as transaction details, PAN Numbers, Order Logs, names of persons authorized to place order, and persons placing orders, be termed as vague, evasive and generic in nature. There are no specific parameters or definite description to define the term vague, evasive or generic in nature.*

c. *Please understand that the system used in 2010, 2012 or 2016 were not as advanced and accommodative as the system used today. We have already explained that the software used in those years, as you are well aware, had a lower capacity of hard disk. The very fact that we have already clarified about non¬existence of the recordings of cleared transactions when there is no dispute having system in those days which had limited space was clarified and confirmed time and again. So there is no element of being vague or evasive in providing information and details.*

d. *As regards your observation in paragraph 7 of the notice wherein you have referred to voice recording for an arbitration matter in 2012 for trades placed during the period September 2010 to December 2010, we would like to clarify the client in question was a regular client who did trades and cleared his dues regularly. It was on the day of listing of the scrip MOIL i.e. 15th December 2010 where he over extended himself as per his claim. Mid-way through the day when he was in an excess debit of Rs. 500,000, we asked him provide us with the debit amount or to stop trading. However, he promptly handed over a cheque for Rs. 500,000 and requested us to let him continue his trade. It was only at the end of trading that he told us that the* *cheque was no good and he only did it to buy time and that he did not have sufficient funds to make good his losses. Further, he requested us for some time to make payment. Shortly after when all talks failed over the next few days, we extracted all recordings of the day and put them on a CD and preserved for evidence due to non-receipt of payment and the party's request for time on account of dishonor of cheque.*

*e. After extraction, a Notice was sent for recovery proceeds and all legal steps to stop his trading and recovery of funds was taken. We filed a criminal complaint against him through our advocate in Pune, Late Mr. Viraj B Kakde. While this procedure was on, we sought other options and one of the actions suggested was to file an arbitration. This being a first for us we too were grappling in the dark. The same cd which was extracted earlier was presented during the arbitration proceedings so it is not the case of extracting the recordings on February 2012 as assumed by you, but was extracted on 10th January 2011 and presented during the arbitration process.*

7. In the interest of the principles of natural justice, an opportunity of hearing was given to Lalkar Securities on October 09, 2019. During the course of hearing, the authorized representatives of Lalkar Securities appeared and reiterated the submission made in their letter dated August 16, 2019.

## CONSIDERATION OF ISSUES

8. I have carefully perused the charges levelled against the Noticees, its reply and the documents / material available on record. I note that the issues that arise for consideration in the present case are :

    (a) Whether Lalkar Securities failed in maintaining the records and providing to SEBI, the details pertaining to placement of order in the account of its clients Ms. Shefali and Ms. Pallavi, thereby, violating Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II r/w Regulation 9 of Stock Broker Regulations.

(b) Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act?

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. Before proceeding further, I would like to refer to the relevant provisions of the Stock Brokers Regulations, alleged to have been violated by Lalkar Securities, as below:

***Stock Broker Regulations***
***SCHEDULE II***
***CODE OF CONDUCT FOR STOCK BROKERS***
***A.*** *General*
***(2)*** *Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*

**A. <u>Whether Lalkar Securities failed in maintaining the records and providing to SEBI, the details pertaining to placement of order in the account of its clients Ms. Shefali and Ms. Pallavi, thereby, violating Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II r/w Regulation 9 of Stock Broker Regulations.</u>**

10. I note that the allegation against Lalkar Securities is that they failed to provide the critical information pertaining to the order placement in the account of its clients Pallavi and Shefali in the scrip of ADF. On July 27, 2016, ADF had informed the exchange that Company had approved a buyback of 14, 40,000 Equity Shares at a price not exceeding ₹125 per equity share of ₹10/- each for an aggregate amount not exceeding ₹18 crore. It is observed that the trading activity of the aforesaid clients of Lalkar Securities viz. Ms. Pallavi and Ms. Shefali pointed to the possibility of trading by them on the basis of aforesaid unpublished price sensitive information regarding buyback of the shares of ADF. Therefore, SEBI initiated an investigation into the matter and in relation to the aforesaid investigation, vide letter dated October 27, 2017, SEBI advised Lalkar Securities to submit certain details pertaining to the trading done by Ms.

Pallavi and Ms. Shefali including details of order placement and recording of the order placement by them. In response to the SEBI letter, Lalkar Securities, vide reply letter dated November 24, 2017 informed SEBI that the orders in the account of Ms. Pallavi and Ms. Shefali used to be received from Mr. Navinchandra Mehta, Mr. Abhishek Mehta and Mr. Bhavesh Thakkar from the telephone numbers 9820710000, 9820417842 and 9323524675. The Noticee was advised by SEBI to confirm the person who had placed order in the account of Ms. Shefali and Ms. Pallavi. In response, Noticee merely mentioned aforesaid three names as the persons who were authorised for placing orders in the account of Ms. Shefali and Ms. Pallavi. Therefore, Lalkar Securities failed to categorically confirm the identity of the person who placed the orders on behalf of each of its aforesaid clients and it also failed to provide the recordings of the order placement in the account of its aforesaid clients. The Noticee stated in its letter that the recording of order placement is only kept till the successful completion of the trade and settlement of the same.

11. Thereafter, SEBI repeatedly advised Lalkar Securities to provide the details pertaining to the orders placed in the account of Ms. Shefali and Ms. Pallavi. Details sought from the Noticee included information such as mode of placement of order(s), telephone/mobile numbers from which the order(s) were placed, name of person(s) placing and taking the order(s), copy of voice recordings of the order placement and the relevant transcripts, in chronological order. However, the Noticee was unable to provide the recordings and transcript pertaining to the order placement of its clients.

12. As regards the allegation against the Noticee that it failed to provide correct details to SEBI regarding the person placing orders in the accounts of Ms. Shefali and Ms. Pallavi, the Noticee has submitted that it had provided the names of authorized persons who had placed orders in the account of its aforesaid clients. Therefore, the Noticee has submitted that it had provided the exact details of the persons placing orders in the account of Ms. Shefali and Ms. Pallavi. Noticee further states that there was no requirement for it to

maintain the recordings of the order placement of its clients during the relevant period. I am not in agreement with the submission of the Noticee in this regard. I have perused the replies submitted by the Noticee to SEBI during the course of Adjudication proceedings. I note that the Noticee was specifically asked to identify the person who had placed the orders on behalf of Ms. Shefali and Ms. Pallavi in the scrip of ADF. However, the Noticee in its reply merely mentioned that that the orders in the account of Ms. Pallavi and Ms. Shefali used to be received from Mr. Navinchandra Mehta, Mr. Abhishek Mehta and Mr. Bhavesh Thakkar from the telephone numbers 9820710000, 9820417842 and 9323524675. Thus, the Noticee failed to identify exact person and the phone no. who used to place order on behalf of Ms. Pallavi and Ms. Shefali in the scrip of ADF during the Investigation period. The requirements of 'due skill, care and diligence' cannot be defined in anticipation of each and every scenario in the securities market and therefore, a registered intermediary is expected to have system in place and also follow procedures which facilitates smooth functioning of the securities market. As a diligent stock broker, the Noticee is expected to maintain a record of the order placement in the account of its clients. Such basic information is critical for SEBI to identify the persons placing orders on behalf of the clients specifically of Insider trading. It is expected of a stock broker who is a registered intermediary, to maintain a proper record of order placements from the clients. The identification of the exact person who has placed orders in an account is crucial from the point of view of investigations conducted by SEBI. If a broker submits such evasive reply by merely mentioning the names of persons who are authorized to trade in the particular account and not provide exact details of the person placing the order, it would be extremely difficult for SEBI to ascertain the role of entities dealing in shares such as that in the instant case, thus, crippling the entire investigation.

13. In this context, I deem it appropriate to refer to the Hon'ble Supreme Court order in the matter of Chairman, SEBI vs. Shriram Mutual Fund{[2006] 5 SCC 361} wherein following was observed:

"*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. .......... Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

14. Therefore, Lalkar Securities has failed in exercising due skill, care and diligence in the conduct of its business by failing to categorically confirm the identity of the persons who had placed orders in the account of its clients Ms. Shefali and Ms. Pallavi and also by failing to maintain the records of the order placed in the account of its aforesaid clients. Therefore, the Noticee has violated the provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II r/w Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and therefore, I conclude that the Noticee is liable for imposition of monetary penalty under the provisions of section 15 HB of the SEBI Act. The provision of Section 15HB of the SEBI Act are mentioned below:

***<u>SEBI Act</u>***

***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 may extend to one crore rupees*

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

***Factors to be taken into account by the adjudicating officer.***
***15J.*** *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
***(a)*** *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
***(b)*** *the amount of loss caused to an investor or group of investors as a result of the default;*
***(c)*** *the repetitive nature of the default.*

16. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the investigation department of SEBI has not quantified the profit/loss for the violations committed by the Noticee in the said matter. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor/clients or group of investors/clients as a result of the default by the Noticee. I am of the view that the abovementioned lapses on the part of the Noticee cannot be ignored because Stock Brokers are expected to act in securities markets in the most professional manner and even minor lapses and violations on the part of the Stock Brokers may have wide ramifications in the securities markets.

**ORDER**

17. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakh) on Noticee / Lalkar Securities under Section 15HB of the SEBI Act.

18. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees. 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 favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of the penalty, the Noticees may contact the support at portalhelp@sebi.gov.in.

19. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Division of Regulatory Action-2, Enforcement Department (EFD1 – DRA II), Securities and Exchange Board of India, SEBI Bhavan 2, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051":

| | |
|---|---|
| 1. Case Name: | |
| 2. Name of payee: | |
| 3. Date of payment: | |
| 4. Amount paid: | |
| 5. Transaction no.: | |
| 6. Bank details in which payment is made: | |
| 7. Payment is made for:<br>(like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details) | |

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

21. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to Lalkar Securities Pvt Ltd and also to the Securities and Exchange Board of India.

**Date: October 31, 2019**
**Place: Mumbai**

**Dr. ANITHA ANOOP**
**ADJUDICATING OFFICER**