BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/25037-25038]

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) RULES, 1995

Noticee No.	Name of Noticee	PAN
1.	**M/s. Karvy Capital Limited**	**AAACG4544N**
2.	**Mr. Kedar Ramesh Deshpande**	**AAMPD7153P**
3.	**Mr. G. Krishna Hari**	**ADEPG7798Q**
4.	**Mr. Kovilkathu Parameswaran Jeewan**	**AAMPJ9205E**
5.	**Mr. P.B. Ramapriyan**	**AAPPR8313Q**
6.	**Mr. Rajiv Ranjan Singh**	**ASHPS8610D**

(*Noticees 1 to 6 collectively referred to as '**Noticees'***)

In the matter of **M/s. Karvy Capital Limited**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted a comprehensive inspection of M/s. Karvy Capital Limited (hereinafter referred to as **'Karvy/Noticee 1/Company'**) from December 05, 2019 to December 13, 2019. The said inspection was carried out at the office address of Noticee 1 at 702, Hallmark Business Plaza, Off. BKC, Opp. Gurunanak Hospital, Bandra (East), Mumbai - 400 051, w.r.t. its Portfolio Manager activities (hereinafter referred to as '**PMS**). The period covered in the inspection was from April 01, 2018 to March 31, 2019 (hereinafter referred to as '**Inspection Period'**).

2. Noticee 1 is a SEBI-registered Portfolio Manager, having SEBI registration number as INP000004524. The directors of Noticee 1 during the inspection period is given hereunder:

Sl. No.	Name (Noticee no.)	Designation	Date of Joining
1.	Mr. Kedar Ramesh Deshpande (Noticee 2)	Whole Time Director	10/08/2015
2.	Mr. G. Krishna Hari (Noticee 3)	Director	29/05/2015
3.	Mr. Kovilkathu Parameswaran Jeewan (Noticee 4)	Director	29/05/2015
4.	Mr. P.B. Ramapriyan (Noticee 5)	Director	29/05/2015
5.	Mr. Rajiv Ranjan Singh (Noticee 6)	Director	27/09/2015

3. Based on the findings of inspection and the reply of Noticee 1, SEBI observed that Noticees have violated various provisions of SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as "Portfolio **Managers Regulations,1993" / "PMS Regulations,1993"**) and applicable SEBI Circulars. Accordingly, SEBI initiated adjudication proceedings against Noticees under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") to inquire into and adjudge under Section 15HB of SEBI Act, the alleged violations of the following provisions by Noticees:

   a. Regulation 16(5) of PMS Regulations, 1993;
   b. Regulation 15(1A) of PMS Regulations, 1993;
   c. Regulation 14(1)(b) of PMS Regulations,1993;
   d. Regulation 13 of PMS Regulations, 1993 read with Clause I of Code of Conduct as specified in Schedule-III of PMS Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011;
   e. Clause 6 of SEBI Circular no. CIR/MIRSD/66/2016 dated July 21, 2016
   f. Clauses 1 and 2 of SEBI Circular no. MIRSD/Cir-120/2016 dated November 10, 2016;
   g. Regulation 14(2)(a) read with Clause III- 4 of Schedule V of PMS Regulations, 1993

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

4. Vide order dated June 21, 2021, SEBI appointed the undersigned as the Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, the various violations alleged to have been committed by Noticee 1 as well as its directors namely Mr. Kedar Ramesh Deshpande i.e. Noticee 2, Mr. G. Krishna Hari i.e. Noticee 3**,** Mr. Kovilkathu Parmeswaran Jeewan i.e. Noticee 4, Mr. P.B. Ramapriyan i.e. Noticee 5 and Mr. Rajiv Ranjan Singh i.e. Noticee 6**.**

<u>SHOW CAUSE NOTICE, REPLY AND HEARING</u>

5. A common Show Cause Notice (hereinafter being referred to as the "**SCN**") dated November 02, 2021 was issued to Noticees in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticees and why penalty, if any, should not be imposed upon them under Section 15HB of SEBI Act for the aforesaid violations alleged to have been committed by Noticees.

6. The allegations levelled against Noticees in the SCN are as under**:**

A. Open position in respect of allocation of purchases of securities

1. *As per Regulation 16(5) of Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 (herein after referred to as "PMS Regulations, 1993"), Portfolio Manager shall not keep any open position in respect of allocation of sales or purchases affected in day. During the inspection, the transaction statements of the Noticee1's pool accounts were verified. It was observed that on several instances, Noticee 1 had kept open positions in respect of allocation of sales or purchases affected in a day. The list of open positions for 5-12 days are given below:*

Date	***Name of the security***	***No. of Securities lying as at end of the day***	***Name of the strategy***
24/01/2019	*ICICI Prudential Mutual Fund Money Market Fd Direct Pl Cumulative*	*82,997.283*	*AEGIS*
28/01/2019	*ICICI Prudential Mutual Fund Money Market Fd Direct Pl Cumulative*	*27,329.389*	*AEGIS*
08/02/2019	*ICICI Prudential Mutual Fund Money Market Fd Direct Pl Cumulative*	*9,541.476*	*AEGIS*
14/02/2019	*ICICI Prudential Mutual Fund Money Market Fd Direct Pl Cumulative*	*36,353.937*	*AEGIS*
30/03/2019	*Aye Finance Private Limited Series 01-20000000 12.14 Ncd 06mr24 Fvrs10*	*6,97,790*	*Excel*
19/02/2019	*Ess Kay Fincorp Limited 11.1610 Ncd 05mr24 Pprs50*	*6,00,000*	*Excel*
01/02/2019	*Reliance Capital Limited Series B/447 Br Ncd 11jl22 Fvrs1lac*	*208*	*Excel*
28/02/2019	*Reliance Capital Limited Series B/447 Br Ncd 11jl22 Fvrs1lac*	*304*	*Excel*
01/01/2019	*Bindu Recepies Private Limited Series S 12 Ncd 31dc24 Fvrs1*	*1,83,640*	*Demeter*
06/02/2019	*Visage Holdings And Finance Private Limited Sr 1- 1000000 14.10 Ncd 31jn25 Fvrs10*	*1,00,00,000*	*Demeter*

2. *The open positions which have been kept open for a day in more than 50 instances is given as Annexure- 3*

3. *In view of the same, it is alleged that Noticee 1 and its directors, i.e. Noticees 2 to 6 contravened the provisions of Regulation 16(5) of PMS Regulations, 1993.*

B. Reduction in the corpus of the clients

1. *As per Regulation 15(1A), Portfolio Manager shall not accept from the client, funds or securities less than Rs. 25 lakh. During the course of inspection, copies of transactions of clients showing the deployment of funds of clients and redemption of securities/funds were verified. It was observed that in the Demeter portfolio strategy, there were reduction in principle amount invested due to direct interest/dividend pay-out from issuer to the client's bank account which resulted in reduction of invested corpus below Rs.25,00,000/-. It was*

observed that there were more than 500 clients who had corpus of less than Rs. 25 lakh. The list of such clients is given as Annexure-4.

2. *In view of the same, it is alleged that Noticee 1 and its directors i.e. Noticees 2 to 6 have contravened the provisions of Regulation 15(1A) of PMS Regulations, 1993.*

C. Termination of the agreement with the clients

1. *As per Regulation 14(1) of PMS Regulations, 1993, Portfolio Manager has to enter into an agreement in writing with the client and provides for, inter alia, following clauses to be included in such agreement:*

   Clause (b) The agreement between the portfolio manager and the client shall, inter alia, contain:

   (v) terms for early withdrawal of funds or securities by the clients;
   (vii) period of the contract and provision of early termination, if any;

2. *During the course of inspection, a sample copy of the agreement with the clients (hereinafter referred to as 'PMS agreement') (Annexure-5) were verified and the following was observed to be specified in the PMS agreement**: -***

   "Points 13.5 & 13.6 – Term & Termination:

   13.5 The portfolio manager may at any time terminate this agreement by written notice of termination to the Client.

   13.6 In addition to being entitled to terminate this Agreement under Clause 4, the Client may at any time terminate this Agreement by giving not less than 30 days' prior written notice of termination to the Portfolio Manager."

3. *It was observed from the above that Noticee 1 has made provision for termination of client agreement without specifying any time limit at its end, whereas clients can terminate the agreement only after giving not less than 30 days' prior written notice of termination. This was not found to be in the clients' interest and Noticee 1 was not found to be conducting its affairs with high standards of integrity and fairness in their dealings with its clients. In view of the same, it is alleged that on account of such biased provisions of termination of PMS agreement, Noticee 1 and its directors i.e. Noticees 2 to 6 have contravened the provisions of Regulation 14(1)(b) of PMS Regulations, 1993.*

D. Outsourcing of core activities

1. *As per Regulation 13 of PMS Regulations, 1993, Portfolio Manager has to abide by the Code of Conduct as specified in Schedule III of PMS Regulations, 1993. As per clause 1 of Code of Conduct, Portfolio Manager shall, in conduct of his business, observe high standards of integrity and fairness in all his dealings with his clients and other portfolio managers. Further, as per clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011, intermediaries are not permitted to outsource their core activities.*

2. *On perusal of the Clause 2.18 of PMS agreement (refer Annexure-5), the following was observed: -*

   "*For the purpose of discharging any of the duties, obligations and functions (whether under this agreement or under above mentioned Letter of Authority), of the Portfolio Manager, the client hereby empowers the Portfolio Manager to act through any of its officers, employees or representatives or other person specifically authorised by the Portfolio Manager and the Portfolio Manager is empowered to delegate the performance of its duties, discretions, obligations, any of powers and authorities here under to such sub-delegates and pay fees/consultancy charges that may be charged to the client's account****."***

3. *It was thus observed that Noticee 1 had provided an option to delegate the duties/obligations and functions by paying consultancy charges to whom it was delegated and later it was charged to the clients' account. The duties, obligations and functions of Portfolio Manager inter-alia are the core activities of PMS. In view of the same, it is alleged that by making provisions with regard to outsourcing of core activities in the model agreement, Noticee 1 has failed to observe high standards of integrity and fairness in his dealings with his clients. The copy of the sample Portfolio Management Service agreement is given as Annexure-5.*

4. *Therefore, it is alleged that Noticee 1 and its directors i.e. Noticees 2 to 6, contravened the provisions of Regulation 13 of PMS Regulations, 1993 read with Clause 1 of Code of Conduct as specified in Schedule III of PMS Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011****.***

E. Compliance with Know Your Client requirements

1. *As per Clause 6 of SEBI Circular no. CIR/MIRSD/66/2016 dated July 21, 2016, registered intermediaries were required to upload the Know Your Client (KYC) data with Central KYC Records Registry (CKYCR) in respect of all individual accounts opened on or after August 01, 2016. Further, as per Clauses 1 & 2 of SEBI Circular no. MIRSD/Cir-120/2016 dated November 10, 2016, intermediaries other than mutual funds have to ensure 50% of completion of uploading of existing KYC data by November 30, 2016 and remaining 50% of KYC data by December 31, 2016. During the course of inspection, CKYCR Registration details were sought from Noticee 1. It was observed that Noticee 1 has not obtained registration with CKYCR and has not uploaded the KYC data of clients with CKYCR. Email received from CKYCR dated June 11, 2019 is placed as Annexure- 6.*

2. *In view of the same, it is alleged that by not obtaining registration with CKYCR and uploading the KYC data with CKYCR, Noticees 1 and its directors i.e. Noticees 2 to 6 have contravened the provisions of Clause 6 of SEBI Circulars No. CIR/MIRSD/66/2016 dated July 21, 2016 and Clauses 1 and 2 of SEBI Circular No. MIRSD/Cir- 120 /2016 dated November 10, 2016.*

F. Failure to disclose details of penalties/ pending litigations or proceedings

1. *As per Regulation 14(2)(a) of PMS Regulations, 1993 read with Clause III- 4 of Schedule-V of PMS Regulations, 1993, Portfolio Manager has to provide the Disclosure Documents as specified in Schedule-V, along with a certificate in Form C as specified in Schedule I, at least two days prior to entering into an agreement with the client. Further, as per Clause 3(b) of SEBI Circular no. CIR/IMD/16/2020 dated November 02, 2010, Portfolio Manager has to place latest disclosures documents on its website, wherever possible. During the course of inspection, the disclosures documents as well as correspondence made with the clients were verified. It was observed that Annexure-B of the Disclosure Document which contains information about "Penalties, pending litigation or proceedings, findings of inspection or investigations for which action may have been taken or initiated by any regulatory authority against group companies/ associates of PMS-KCL" was not available on the website of Noticee 1, i.e., www.karvycapital.com. The disclosures documents as required under Regulation 14 of PMS Regulations, 1993 is given as Annexure-7.*

2. *In view of the same, it is alleged that Noticee 1 and its directors i.e. Noticees 2 to 6 contravened the provisions of Regulation 14(2)(a) read with Clause 4 of Schedule V of PMS Regulations, 1993.*

7. The SCN was sent to Noticees through Speed Post Acknowledgment Due ("**SPAD**") on November 02, 2021 and digitally signed email dated November 02, 2021 at the email id "phanisekhar.p@karvy.com". The SCN served to Noticees through SPAD returned undelivered. However, SCN sent though digitally signed emails were delivered to Noticees.

8. As no reply to the SCN was received from Noticees, vide hearing notice dated September 12, 2022, an opportunity of personal hearing was granted to Noticees on October 07, 2022. The said hearing notice was sent to alternate addresses and email id of Noticees through SPAD and digitally signed email dated September 13, 2022. Along with the said hearing notices, SCN dated November 02, 2021, (herein after referred to as "**Hearing Notice cum SCN**") was also forwarded to Noticees.

9. The facts available on record w.r.t. the service of Hearing Notice cum SCN, replies received, inspection of documents, settlement applications filed under Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 and hearings granted to Noticees are stated hereunder:

Noticee No.	**Details of service of Hearing Notice cum SCN and further communication with Noticees**
1	a) Hearing Notice cum SCN sent to Noticee 1 sent through SPAD at alternate address returned undelivered. However, it was delivered to Noticee 1 through digitally signed email. b) Noticee 1 vide its email dated September 14, 2022, provided its new address and requested to forward the copy of the Hearing Notice cum SCN at its new address. c) Accordingly, vide letter dated September 14, 2022, Hearing Notice cum SCN forwarded to Noticee 1 at its new address and was duly served upon it. d) Noticee 1 vide its email and letter dated September 28, 2022, submitted the reply to SCN. e) As hearing granted to Noticee 1 on October 07, 2022 was adjourned due to official exigency, Noticee 1 was granted another hearing on January 18, 2023, vide email dated January 10, 2023. f) On the scheduled date of hearing, i.e., January 18, 2023, Noticee 1 submitted additional reply to the SCN. g) On the scheduled date of hearing, Authorised Representative (**AR)** of Noticee 1 attended the hearing and reiterated the submissions made earlier. Further,

Noticee No.	Details of service of Hearing Notice cum SCN and further communication with Noticees
	AR of Noticees1 requested for additional time till January 23, 2023 for submitting additional reply which was acceded to. h) On January 23, 2023, Noticee 1 submitted additional reply in the matter.
2	a) Hearing Notice cum SCN sent to Noticee 2 sent through SPAD and through digitally signed email was served upon Noticee 2. b) Vide email dated September 28, 2022, AR of Noticee 2 requested for inspection of documents and also sought certain additional documents. c) Noticee 2 was granted inspection of documents on October 07, 2022. Further, AR was informed that the additional documents as sought vide letter dated September 28, 2022, will be provided in due course. d) As the information/documents sought by Noticee 2 was not available on record, the same was sought from SEBI. Based on the information/documents provided by SEBI, the same was provided to AR of Noticee vide email dated February 20, 2023. Further, Noticee 2 was advised to submit the reply on or by March 06, 2023 and an opportunity of personal hearing was granted to Noticee 2 on March 06, 2023. e) Vide email dated March 02, 2023, Noticee 2 submitted the reply to SCN. f) On March 06, 2023, AR of Noticee attended the hearing and reiterated the submissions made vide reply dated March 02, 2023. g) Meanwhile, I also note that vide email dated November 22, 2022, relevant department of SEBI informed that Noticee 2 had filed settlement application in terms of Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 and requested to keep the present adjudication proceedings in abeyance till disposal of their settlement application. On January 31, 2023, the relevant department of SEBI informed the undersigned of the withdrawal of the settlement application filed by Noticee 2.
3	a) Hearing Notice cum SCN sent to Noticee 3 sent through SPAD at alternate address returned undelivered. However, it was delivered to Noticee 3 through digitally signed email. b) Hearing granted to Noticee 3 on October 07, 2022, was adjourned due to official exigency. Accordingly, Noticee 3 was granted another hearing on January 18, 2023, vide email dated January 10, 2023. c) Noticee 3 vide his email dated January 16, 2023 requested for adjournment of personal hearing and also requested for the Annexures to the SCN.

Noticee No.	Details of service of Hearing Notice cum SCN and further communication with Noticees
	d) The request of Noticee 3 was acceded to and vide email dated January 20, 2023, another opportunity of personal hearing was granted to Noticee 3 on February 06, 2023 and Annexures to the SCN was also provided to Noticee 3. e) On February 06, 2023, AR of Noticee attended the hearing and requested for additional time till February 13, 2023 for submitting their reply which was acceded to. f) On February 13, 2023, Noticee 3 submitted the reply to the SCN.
4	a) Hearing Notice cum SCN sent to Noticee 4 sent through SPAD at alternate address returned undelivered. However, it was delivered to Noticee 4 through digitally signed email. b) Noticee 4 vide his email dated and letter dated September 28, 2022, submitted the reply to SCN and vide email dated October 07, 2022 submitted additional judgements/ orders in line with reply submitted on September 28, 2022. c) As hearing granted to Noticee 4 on October 07, 2022 was adjourned due to official exigency, Noticee 4 was granted another hearing on January 18, 2023, vide email dated January 10, 2023. d) Noticees 4 submitted additional reply to the SCN On January 18, 2023, prior the personal hearing which was same as reply submitted on October 07, 2022. e) On the scheduled date of hearing, AR of Noticee 4 attended the hearing and reiterated the submissions made earlier. Further, AR of Noticee 4 requested additional time till January 23, 2023 for submitting additional reply which was granted. f) On January 20,2023, Noticee 4 submitted additional reply to SCN.
5	a) Hearing Notice cum SCN sent to Noticee 5 sent through SPAD at alternate address returned undelivered. However, it was delivered to Noticee 5 through digitally signed email. b) Noticee 5 vide email dated October 07, 2022, submitted his reply to the SCN. c) As hearing granted to Noticee 1 was adjourned due to official exigency, Noticee 1 was granted another hearing on January 18, 2023, vide email dated January 10,2023. d) Noticee 5 attended the hearing scheduled on January 18, 2023 and reiterated the reply submitted on October 07, 2022

Noticee No.	Details of service of Hearing Notice cum SCN and further communication with Noticees
6	a) Hearing Notice cum SCN sent to Noticee 6 sent through SPAD and through digitally signed email served to Noticee 6. b) Vide email dated October 03, 2022, Noticee 6 forwarded a letter dated October 01, 2022, submitting the preliminary reply and requested for inspection of documents and certain additional documents and also requested for cross examination of inspection team of SEBI, Noticees 2, 3 and Principal Officer of KCL. c) Vide email dated January 10, 2023, Noticee 6 was granted opportunity of inspection of documents on January 16, 2023.Further, Noticee 6 was informed that no statements of principal officer of KCL, Noticees 2,3 and inspection team had been recorded and were part of records of the adjudication proceedings. Accordingly, the request of cross examination was not acceded to. d) On January 16, 2023, AR of Noticee 6 carried out the inspection of documents. During the inspection, AR was advised to submit the reply of SCN on or before January 30, 2023 and opportunity of personal hearing was granted to Noticee 6 on February 06, 2023. e) On January 31, 2023, Noticee 6 submitted the reply to the SCN. f) On February 06, 2023, AR of Noticee 6 attended the hearing and requested for additional time for making further submission. Noticee 6 was granted time till February 13, 2023 for filing his post-hearing submission. g) On February 12,2013, Noticee 6 submitted his reply to the SCN.

10. As mentioned in above table Noticee 2 submitted reply to the SCN on March 02, 2023. At paragraph 25 of his reply, Noticee 2 stated that he had not received certain documents as sought by him in para 6 of his letter dated September 28, 2022. Noticee 2 also placed reliance on the judgements of Hon’ble SAT in the matter of SEBI vs. Price Water house (Civil Appeal No. 6001 6002 and 6003-6004 of 2012 decided on 10.01.2017), Mayrose Capfin Private Limited vs. SEBI (2012 SCC OnLine SAT 50), Chanda Kochhar vs. SEBI (SAT Appeal No. 751/2022, dated January 05, 2023) and Hon’ble Supreme Court judgements in the matter of Reliance Industries Ltd. v. SEBI (2022 SCC Online SC 979) and T. Takano v. SEBI (2022 SCC OnLine SC 210). In this regard, during the course of personal hearing, AR of Noticee 2 informed that he did not wish to pursue the request for copies of the documents as requested at para 25 of his reply dated March 02, 2023 other than the documents which have already been shown/ provided during the inspection or subsequent to the inspection.

11. Similarly, as mentioned in above table, Noticee 6 submitted his reply on January 31, 2023. In the said letter Noticee 6 submitted he had not been provided certain documents as specified at para 7(iv)(a)-(d) of the aforesaid letter. In this regard, during the hearing, AR of Noticee 6 informed that he did not wish to pursue the request for copies of the documents as requested in para 7(iv)(a) -(d) of his reply dated January 31, 2023.

12. The relevant submissions made by Noticee 1 are summarized as under:

a. *The present proceedings suffer from delay. The alleged violations relate to period 2018-19 and the SCN has been issued on 2.11.21 (i.e. after almost more than 3 years and served on us in 2022). Clearly, there has been inordinate delay in the issuance of SCN. The aforesaid inordinate delay has severely prejudiced Noticee 1 and the said inordinate delay has not been explained by SEBI. On this ground alone, the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped. Noticee 1 has placed reliance on the judgement of Hon'ble SAT in the matter of Ashlesh Gunvantbhai Shah Vs SEBI (SAT Appeal no 169 of 2019), Ashok Shivlal Rupani and anr. Vs SEBI (SAT Appeal no 417 of 2018) to support their contention.*
b. *The observation in the Notice pertain only to certain technical and procedural issues, which are not, even remotely, serious in nature.*
c. *The observations do not pertain to any kind of fraud or manipulation or unfair trade practices indulged in by us or pertaining to causing any harm to clients' interest in any manner etc. or misappropriation of funds/securities of the clients.*
d. *The alleged lapses are inadvertent/accidental and purely unintentional.*
e. *At the relevant time (i.e. 2018-19), KCL's business activities were divided into two different business verticals viz. PMS Product Vertical & Debt Products Vertical.*
f. *The day to day management and operations of PMS Product Vertical of KCL were exclusively handled by Mr Kedar Deshpande along with his team of officials as set out here in below:*

Name	*Kedar Deshpande*
Designation	*Whole Time Director*
Responsibility	*PMS Product Vertical* *Regulatory Compliances*
Entity	*Debt PMS in Karvy Capital Ltd.*
Reportees	*PMS Team*
	PMS Fund Manager
	Compliance Officer
	Product Marketing (1 member)
	PMS Operations Team (3 Members)
	PMS Sales Team (11 Members)
	PMS Analysts & Fund Accounting Team (3 Members)
	Accounting (1 Member)
	Structured Finance (2 Member)

	Research Associate(1 Member)
	Client Servicing (1 Member)
PMS Bank Accounts	*PMS Bank Accounts*

g. *Similarly, the day to day management and operations of Debt Products Vertical of KCL were exclusively handled by Mr. K P Jeewan along with his team of officials as set out herein below:*

Name	*K P Jeewan*
Designation	*Director*
Responsibility	*Debt products Vertical* *Retail Debt P&L- Karvy Capital Ltd.* *Wholesale Debt P&L- Karvy Stock Broking Ltd.*
Entity	*Retail Debt in Karvy Capital Ltd.*
	Wholesale Debt business in Karvy Stock Broking Ltd.
Reportees	*Debt Team*
	Debt Sales Team (25 Member)
	Debt Operations (3 Member)
	Bank & Accounting (1 Member)
Bank Accounts	*Retail Debt Bank Accounts*
	Retail Debt CSGL Account
	Retail Debt Credit Lines

h. *Both the business verticals of KCL were distinct and were having separate and independent teams, with no product or team overlap. Both the business verticals of KCL, had clearly identified area of operation and allocation of responsibilities. Both heads of PMS Product Vertical & Debt Products Vertical, reported to Group CMD. Mr Kedar Deshpande -PMS Product Vertical, resigned in September 2019.Consequent to resignation of Mr Kedar Deshpande, Mr Jeewan took over as Whole Time Director from November 2019.*

i. *W.r.t. allegation regarding Open position in respect of allocation of purchases of securities, the stray instances of positions being kept open as stated in the Notice, have occurred mainly due to pay out of securities/units received beyond the cut-off time from the Registrar/Issuer or security being transferred to pool account on record date in order to ensure credit of interest payment to Pool account. Such circumstances are entirely beyond their control and unavoidable, and based on the same it cannot be alleged that they had violated the provisions of PMS Regulations. In all the 50 instances, positions remained open due to pay out of securities/units received beyond the cut-off time from the Registrar/Issuer or transfer of security into pool account on record date. They have migrated completely to Speed –e facility of NSDL for online transfer of securities, as against manual DIS, which was being followed earlier, thus, eliminating possibilities of human errors/delays creeping in. Accordingly, Noticee has denied that they have violated the provisions of Regulation 16(5) of PMS Regulations.*

j. *W.r.t. allegation regarding reduction in the corpus of the clients, Noticee 1 had ensured that at the time of on boarding the clients, the clients had given funds and securities not less than Rs. 25 lacs. The instances cited in the SCN, wherein the corpus had reduced below Rs 25 lacs, pertain to cases wherein the reduction is on account of redemptions/maturity resulting in pay-outs made by the issuer directly to the client. The said circumstances are totally beyond their control. It may be appreciated that it is not the case wherein they have on boarded the clients with less than Rs 25 lacs corpus or that they had done something resulting in reduction of corpus of clients below Rs 25 lacs. It is consequent to actions of third party, over which they had no control, the corpus had reduced below Rs 25 lacs. Due to such things they had not made any gains or caused any loss to the clients. Accordingly, it is denied that they have violated the provisions of Regulation 15(1A) PMS Regulations.*

k. *W.r.t. allegation regarding termination of the agreement with the clients, Noticee 1 has submitted that there was an inadvertent error in the drafting of the Termination clause in the PMS Agreement. On becoming aware of the same during the course of inspection, they had taken steps to rectify the same. They had never terminated/suspended any client's account immediately, without giving sufficient prior notice, except in circumstances such as death of the client or the client being banned by SEBI etc. Further, even there is no observation in the Notice that they had terminated/suspended any client's account immediately/without prior sufficient notice. They had not received any complaint from any of their client on this score. Even there is nothing in the Notice to demonstrate that they had terminated/suspended the accounts of the clients immediately/unilaterally by issuing a written notice of termination. Noticee 1 therefore denied that they have acted against the interest of the clients or had failed to maintain high standards of integrity and fairness in all dealings with their clients, as alleged. Noticee 1 has further submitted that the alleged "biased provisions of termination of PMS agreement" were only on paper and were never implemented and were also never intended to be implemented. Non providing of time limit for issuance of termination notice, was purely an error of inadvertence. Therefore, Noticee 1 has denied that they had violated the provisions of Regulation 14(1)(b) of PMS Regulations.*

l. *W.r.t. allegation regarding outsourcing of core activities, Noticee 1 has submitted the following: -*

   - *There is no provision in the Portfolio Management Agreement with regard to outsourcing of core activities. Noticee 1 has denied that they had not outsourced any core activities. The allegation is premised on out-of-context reading of Clause 2.18 of the Agreement, which has been given an expansive and distorted meaning, which was never contemplated or intended by them.*

- *All core activities of PMS, including, defining investment strategy, identifying investment opportunities, forming internal committees and short listing investments, profiling the clients and deciding client-wise allocation, making portfolio decisions on buy/sell, managing the liquidity in the portfolio and issuing necessary instructions to intermediaries such as brokers, depository participants, custodian and registrar, which basically form the crux of investment management etc. were exclusively, decided by the Portfolio Manager and at no point of time the said activities were ever outsourced.*
- *SEBI has observed that none of the core activities of the portfolio manager were outsourced, which also amply reinforces and fortifies our aforesaid contentions. Further, there has never been any investor complaint on this score. In view of the same, the issue that they are not having observed high standards of integrity and fairness in dealings with their clients, cannot and does not arise.*
- *Without prejudice to the aforesaid, in any case, admittedly the PMS Agreement entered with the clients, is subject to provisions of PMS Regulations (which specifically prohibit outsourcing of core activities). Therefore, in case of conflict between the provisions of PMS Agreement & the provisions of PMS Regulations, obviously the provisions of PMS Regulations will prevail and override. Therefore, presence of Clause 2.18 (even if it is read in a very expansive manner to suggest outsourcing of "core activities") was of no consequence.*
- *They have now suitably modified the said clause to addressed all the concerns on this score. Noticee 1 has provided current PMS agreement in support of their contention.*
- *Accordingly, Noticee 1 has stated that the allegation levelled against them that they have not observed high standards of integrity and fairness in dealings with clients or that they have violated the provisions of Regulation 13 of PMS Regulations read with Clause 1 of Code of Conduct as specified in Schedule III and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011, does not valid.*

m. *W.r.t. allegation regarding compliance with Know Your Client requirements, Noticee 1 has mentioned that have always complied with CKYC norms as all the data required were uploaded by our DP (i.e. KSBL). CKYC forms were a part of the PMS account opening process and for convenience the upload process was domiciled at Hyderabad. For every PMS client, there was a separate demat account opened in the name of the respective client and the Depository Team at Hyderabad uploads the CKYC information. At all points of time they had ensured that the CKYC information obtained from each PMS client was duly uploaded. Thus, at all points of time they have complied with "Know Your Client* *requirements". Merely because, they have used the group resources (i.e. KSBL), to ensure compliance with CKYCR norms, they cannot be faulted. In any event, post 2019, they have obtained separate CKYC registration in their name, as the operations of group entities were disrupted. Accordingly, Noticee 1 has denied that they have violated the provisions of Clause 6 of SEBI Circulars No. CIR/MIRSD/66/2016 dated July 21, 2016 and Clauses 1 and 2 of SEBI Circular No. MIRSD/Cir- 120 /2016 dated November 10, 2016.*

n. *W.r.t. allegation regarding failure to disclose the details of penalties/pending litigations or proceedings, Noticee 1 has mentioned the following: -*
    - *The disclosure documents consist of details of action taken against them and/or their associates by any regulatory authority and also important proceedings pending before courts. As a practice a hard copy in booklet form of such Disclosure Document are provided to prospective clients 48 hours before the client opens an account with them.*
    - *Admittedly, it is not the case that requisite disclosures with regard to actions taken etc. have not provided to the clients or that there are any complaints from clients on this score. Based on technicality, i.e. non availability of the disclosures at the relevant time on the website, the allegation has been made. The Disclosure Document is provided to prospective clients and the same was also uploaded on the website. Inadvertently, at the relevant time disclosure on the website was missed. On becoming aware of the said lapse during the course of inspection in 2019, they had immediately uploaded the requisite disclosures on the new website www.karvypms.com (The current website is www.karvycapital.co.in) Thus, the alleged non-disclosure on the website was a technical lapse, which has not affected or impacted clients interest in any manner, including from disclosure perspective, which was admittedly made to them.*
    - *Noticee 1 has therefore denied that they have violated the provisions of Regulation 14(2)(a) read with Clause 4 of Schedule V of PMS Regulations, 1993.*
o. *The alleged lapses pointed out in the SCN are merely technical, venial and procedural in nature. As a result of the alleged lapses, they have not made any gains or derived any unfair advantage. Further, on becoming aware of the stray instances of lapses pointed out during the course of inspection, Noticee 1 has immediately taken steps to rectify the same and avoid their recurrence in future. In the circumstances, no penalty/action is warranted.*
p. *Noticee1 has placed reliance on the judgement of Hon'ble SAT in the matter of UPSE Securities Ltd vs SEBI dated July 25, 2011, Religare Securities Ltd vs SEBI dated June 16, 2011.*

q. *Noticee 1 has requested that no penalties should be imposed on them as the violations observed by SEBI are technical in nature. Noticee 1 has also placed reliance on the judgement of Hon'ble Supreme Court in the matter of Hindustan Steel vs. State of Orissa.*

13. Summary of relevant submissions made by Noticee 2 are as under: -

a. *A show cause notice dated November 02, 2021 has only been served upon for the first time, almost a year later on September 14, 2022.*
b. *KCL was incorporated under the provisions of Companies Act, 1956. It was a wholly owned subsidiary of Karvy Capital Private Limited(KCL). KCL was registered with SEBI as a Portfolio Manager bearing SEBI registration no. INP000004524 on June 10, 2017. Further, KCL is registered with the Reserve Bank of India (RBI) to carry on the business of non-banking financial services with effect from March 24, 1998. As on March 31, 2019 KCL has total assets under management **(AUM**) extended to a sum of INR 6,28,00,00,000 (Indian Rupees Six Hundred and Twenty-Eight Crore) approximately.*
c. *He was appointed a Director of KCL with effect from August 10, 2015. He worked under the directions of the Board of Directors ("Board") of KCL and reported to Mr. C. Parthasarathy, Group Chairman and Managing Director ("CMD"), who was appointed with effect from May 29, 2015.*
d. *He was not involved in the day-to-day management of the Company and merely supervised the Portfolio Management Service ("PMS") team which was appointed by the Board. Pertinently, Mr. Phani Shekhar looked at the fund management, account practices and operations of the fund. Ms. Nagma and Mr. Pradeep assisted Mr. Phani Shekhar as his team members. Furthermore, Ms. Punita Sood was in charge of compliance, SEBI reporting and operations of the fund. It would be pertinent to note, that all regulatory compliance was the duty of Ms. Punita Sood who reported to the Group Compliance Officer Mr. Muthuswami. Additionally, Mr. Amit Nath was in charge of sales and appointment of distributors. Mr. Dharmesh was the CFO and in charge of accounts. Ms. Pallavi oversaw customer engagement and account opening processes. Pertinently, each of the aforementioned sub-verticals within the PMS Product Vertical reported to the Board of the Company on a monthly / bi-monthly basis under a review process.*
e. *It would be pertinent to note that no observation was made therein qua the role of their client in relation to any alleged violation of PMS Regulations.*
f. *Noticee 2 should have access to the documents that are relevant for the purposes of adjudication of the SCN, especially the documents that SEBI has specifically relied upon for the purposes of issuance of the Show Cause Notice. Without these documents being made available, it is not possible for him to effectively defend the allegations levelled*

against in the SCN. In this regard, Noticee 2 has placed reliance on the judgement of Hon'ble Securities Appellate Tribunal ("SAT") in the matter of Chanda Kochhar v. SEBI[1]*, Hon'ble Supreme Court of India judgement in the matter of T. Takano v. SEBI*[2]*,* ***Reliance Industries Ltd. v. SEBI.***[3]

g. *The alleged violations of PMS Regulations and relevant circulars issued by SEBI stem from facts which transpired during the Inspection Period i.e. 3 (three) years prior to the original Show Cause Notice dated November 02, 2021. Shockingly, SEBI only served this SCN to for the first time on September 14, 2022, effectively more than 4 years after the occurrence of the alleged events that are apparently violative of the PMS Regulations and relevant circulars. The initiation of proceedings and thereby serving of the Show Cause Notice by SEBI regarding events which occurred nearly 5 years ago severely prejudices the ability of him to adequately respond to the allegations in light of the dated nature of facts. Noticee 2 in this regard has placed reliance on the judgement of Hon'ble SAT in the matter of of SIC Stock & Services Pvt. Ltd. v. SEBI*[4]*, Ashok Kumar Kayan v. SEBI*[5]*, Ashlesh Gunvantibhai Shah v. SEBI*[6] *, Sanjay Jethalal Soni v. SEBI*[7] *, HB Stockholdings Limited v.* SEBI[8] etc.

h. Even if the Company is held to be an offender he cannot be arraigned as an accused merely due to his designation in the Company. It is settled law that unless there are specific allegations and averments against him delineating his precise role in the alleged violations, he cannot be held to be responsible for the alleged violations.

i. Neither the SCN nor the documents obtained from SEBI during inspection demonstrate that he was liable for any of the alleged violations. Thus, it is submitted that SEBI has erroneously issued notice to him for the alleged non-compliances as there are no cogent material against him establishing his role in the non-compliance. The assumption is solely based on the position held by the Company, however, the same without any cogent material evidence cannot be considered. Noticee 2 has placed reliance on the judgement of Hon'ble SAT in Dr. Uppal Devinder Kumar v. SEBI[9]*, Sayanti Sen v. SEBI*[10]*in support of his contention.*

[1] SAT Appeal No. 751/2022, dated January 05, 2023.
[2] 2022 SCC OnLine SC 210
[3] 2022 SCC Online SC 979.
[4] 2022 SCC OnLine 22
[5] SAT Order dated September 21, 2022
[6] 2020 SCC OnLine SAT 30
[7] 2019 SCC Online SAT 247
[8] 2013 SCC OnLine SAT 56.
[9] 2019 SCC OnLine SAT 202
[10] 2019 SCC OnLine SAT 132

j. *As per Regulation 23A of the PMS Regulations, the portfolio manager is required to appoint a compliance officer who is responsible for the compliance of all the regulations and any other laws issued by the Board or the Central Government. It is his duty to report to the Board. As reiterated earlier, Mr. Phani Shekhar looked at the fund management and Ms. Punita Sood was in charge of compliance, SEBI reporting and operations of the fund, and reported to the Group Compliance Officer. Hence, the Noticee played no active role in decision making and all the key roles in relation to the same were already delegated. It is pertinent to note that the functions allegedly violated are therefore neither under the direct supervision nor control of him. It is pertinent to note that the functions allegedly violated are therefore neither under the direct supervision nor control of Noticee 2. Noticee 2 has placed reliance on the judgement of Hon'ble SAT in Sayanti Sen and P.G. Electroplast Limited v. SEBI*[11] *in support of his contention.*

k. *Noticee 2 was although a director in the Company, was not responsible for the day-to-day affairs of the Company. Moreover, it is not anyone's case that Noticee 2 was appointed as the compliance officer in view of Regulation 23A of the PMS Regulations. In this context, it is abundantly clear that it was not the responsibility of Noticee 2 to ensure compliance with the regulatory landscape that is prevalent in PMS. In fact, there is a statutory responsibility fastened on the compliance officer of the Company to ensure compliance with the regulatory landscape. Furthermore, there is an independent responsibility on such officer to report any non-compliance observed by him to SEBI. Noticee 2 has also placed reliance on the Adjudication order* in the matter of *KL Surana & Ors.*[12] *In support of his contention. Further, Noticee 2 has also placed reliance on the judgement of Hon'ble Supreme Court in the matter of SEBI v. Gaurav Varshney*[13]*, judgements of Hon'ble SAT in the matter of Soumen Chatterjee v. SEBI*[14]*, Amit Mishra* v. *SEBI*[15]*, Adi Cooper vs. SEBI,*[16] *Subhra Jyoti Sardar v. SEBI,*[17] *Ajoy Sankar Sanyal v. SEBI,* [18]*.*

l. *Noticee 2 in his reply stated that he was working under the instructions and directions of the Board but reported to Mr. C. Parthasarathy, CMD. This aspect must be held to be a mitigating circumstance qua against him.*

m. *The scope of inspection was to verify whether KCL has complied with the Regulations and circulars issued in respect of Investor service/ complaints, KYC compliances, on-boarding of clients, fees/charges, conditions of grant of registration, Anti-money laundering*

[11]Order dated 02.08.2019 in Appeal No. 281 of 2017
[12] Adjudication order no. EAD- 2/AO/25- 32/2013- 14 order dated June 28, 2013
[13] 2016 SCC OnLine SC 706
[14] SAT Appeal No. 27 of 2020, dated 07.01.2021.
[15] 2021 SCC OnLine SAT 998
[16] SAT Appeal No. 124 of 2019 decided on 05.11.2019
[17] 2021 SCC OnLine SAT 85
[18] SAT Order dated November 23, 2022

guidelines etc. SEBI has not found any non-compliances with respect to the more serious charges of Investor service/ Complaints, Conditions of grant of registration or Anti-money laundering guidelines, violation of which would not only affect its clients but investors at large. Noticee 2 has placed reliance on the judgement of Hon'ble SAT in the matter of M/s. DSE Financial Services Limited v. SEBI,[19].

n. *SEBI ought not to escalate minor deviations / technical lapses as the Company had not even completed one year since it procured its PMS License. The Company received the PMS Registration only in June 2017 and thereafter the inspection was conducted for a period starting in April 2018. At this point, the he did not even have one year of exposure to understand and monitor all the technical compliance of the SEBI Regulations. For this reason, as argued earlier the Noticee 2 merely acted on the instructions of the Board and allowed and trusted the officials responsible for the day to day functioning to carry out their duties. Hence, instead of taking such a harsh measure as initiating AO proceedings, SEBI ought to instead provide corrective measures / administrative warning. In this regard, Noticee 2 has placed reliance on the judgements of Hon'ble SAT in the matter of UPSE Securities Limited v. SEBI[20] and ACML Capital Markets Limited v. SEBI[21], judgement of Hon'ble Supreme Court in the matter of Hindustan Steel Limited v. State of Orissa[22].*
o. *SEBI Annual Report 2021-22 itself notes that SEBI has conducted 2 inspections in the year 2020-21 of Portfolio Managers and issued 2 administrative warning and 2 Deficiency letters. Further, in the year 2021-22, SEBI conducted 12 inspections of Portfolio Managers and only issued 3 administrative warnings. Thus, SEBI itself relies upon administrative warning / deficiency letter to ensure compliances.*
p. *The allegations qua open positions in respect of allocation of purchase of securities, were beyond the control of Noticee 2. In all of the 50 instances captioned in the SCN, the positions remained open due to pay out of securities/units received beyond the cut-off time from the Registrar/Issuer or transfer of security into pool account on record date in order to ensure credit of interest into payment pool. No complaints had been received by the Company from its clients in this regard. Further, any lapse in this regard was purely unintentional and an error of inadvertence.*
q. *Additionally, the reduction in the corpus of the clients of KCL vis-à-vis the minimum INR 25,00,000 (Indian Rupees Twenty-Five Lakh) was a direct consequence of redemption/maturity resulting in pay-outs being made directly by the issuer to the clients of KCL. In fact, Regulation 15 (1A) only provides that the portfolio manager shall not accept*

[19] 2012 SCC OnLine SAT 159.
[20] 2011 SCC OnLine SAT 86
[21] Order dated 29.06.2022 in Appeal No. 100 of 2020
[22] 1969 (2) SCC 627

less than 25 lakhs from the Client and that the minimum investment amount per client shall be applicable for new clients and fresh investments by existing clients. There is no mention of the same being continuously maintained at 25 lakhs, and hence an interpretation cannot be read into it. Reliance for this purpose can be made on Keshavji Ravji and Co. v. CIT where the Supreme Court held that, "As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible."

r. *While Noticee 2 was not in charge of the documentation, it is also relevant to note that it has been brought to the attention of Noticee 2 that the PMS Agreement suffered from an inadvertent drafting irregularity. However, the same was brought to the attention of KCL only at the time of the inspection of SEBI by which time Noticee 2 had already resigned. Additionally, the captioned PMS Agreement was drafted prior to the joining of Noticee 2. Furthermore, to the knowledge of Noticee 2, the irregularity vis-à-vis the termination clause as mentioned in para 13 of the Show Cause Notice has been rectified since being brought to the notice of the Company. Pertinently it is no one's case that a client account has ever been suspended without sufficient prior notice by the Company. Noticee 2 had always acted in good faith and displayed bona-fides. Noticee 2 has never immediately or unilaterally terminated any clients account.*

s. *As has been stated above, Noticee 2 was not involved in drafting of the PMS Agreement. Even otherwise Noticee 2 and his team have not outsourced any core-activity of the PMS. The alleged violation has been thrust upon Noticee 2 based on a hyper-technical and hypothetical reading of Clause 2.18 of the PMS Agreement which was merely an enabling clause and it is vehemently submitted that Clause 2.18 has never been acted upon. The intent behind the alleged Clause 2.18 in the Agreement was to delegate only the routine and incidental operational activities pertaining to investment decisions (viz. interacting with other intermediaries such as Brokers, AMC's etc. on client's behalf to facilitate the transactions in the portfolio, to provide for appointment of custodian, to seek best fund accounting services etc. as and when required) so as to maintain speed and efficiency in operations. Even then the clause was never used by Noticee 2 or KCL to dilute or avoid their responsibilities towards their clients. Furthermore, there has never been any investor complaint in relation to the same.*

t. *CKYC was complied with at all times via the Company's depository participant (i.e. Karvy Stock Broking Limited). All norms and all data required was complied with by our depository participant domiciled at Hyderabad during the account opening process in relation to PMS.*

u. *Disclosure of pending litigation against the Company was duly provided as a hard copy with the other disclosure documents forming a part of a booklet that was shared with any prospective client of the Company, 48 hours prior to such account opening. Admittedly,* *such disclosures were provided to the clients of the Company by way of a hard copy of a booklet containing disclosure documents. However, based on a technicality (i.e. non-availability of the pending list of litigation against the Company available on its website), the allegation has been levelled upon Noticee 2 whom in any case, did not oversee the development of the Company's website.*

v. *Noticee 2 has also placed reliance on the judgement of Hon'ble SAT in the matter of Piramal Enterprises Limited v. Securities and Exchange Board of India*[23]

w. *The majority of the alleged non-compliances levied in the Notice are rooted in and premised on the benefit of hindsight. For instance, the SCN narrates certain non-compliances in para 11-17 which pertain to provisions of termination and provisions for outsourcing of core activities in the Portfolio Management Service Agreement. As noted earlier, KCL has a portfolio manager registration with SEBI since June 2017, and the service agreement has not been changed since. Further, no investor complaint has been filed in this regard against KCL since its inception till date.*

x. *The conduct of the Noticee 2 was in compliance with the applicable legal framework. Notwithstanding the submissions made above, it is submitted that in the Inspection Report forwarded to the Company vide email dated September 08, 2020, SEBI has observed that Noticee 2 (as a consequence of the Company) has "not derived any direct or indirect benefit out of the Clients funds and securities. Further it has not borrowed/lent funds and securities on behalf of the clients.*

y. *The allegations in the Show Cause Notice clearly suggest that the allegations against the Noticee 2 are founded in hindsight. Given the nature of allegations, it is useful to understand that hindsight bias is the tendency for people with knowledge of an outcome to exaggerate the extent to which they believe that outcome could have been predicted.* [24] . *Noticee 2 has also placed reliance on the judgement on Hon'ble SAT in the matter of Price Waterhouse & Co. & Ors v. SEBI,*[25]*. Noticee 2 has also placed reliance on the Re Citigroup Inc. Shareholder Derivative Litigation,*[26] *the Delaware Chancery Court strictly warned against the consequences of hindsight bias or alternatively put, evaluation by adjudicatory bodies with the benefit of hindsight. In this case, the plaintiffs sought to impose "oversight liability" on the directors of Citigroup Inc. for failure to monitor the corporation's exposure to excessive risk in relation to the problems in the subprime mortgage market, which was disregarded by the court on account of hindsight bias.*

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[23] 2019 SCC OnLine SAT 134

[24] Hal R. Arkes & Cindy A. Schipani, *Medical Malpractice* v. *The Business Judgment Rule: Differences in Hindsight Bias*, 73 OR. L.REV. 587, 587 (1994) [cited in footnote 50 of *In re Citigroup Inc. Shareholder Derivative Litigation*, 964 A.2d 106 (2009)].

[25] 2019 SCC OnLine SAT 165.

[26] 964 A.2D 106 (2009).

z. *Without prejudice to the above, even if it was found that KCL was in non-compliance of the provisions of the PMS Regulations as laid out in the SCN, no penalty can be imposed on Noticee 2. It is abundantly clear that in absence of any investor complaint in this regard, that the actions of KCL have not adversely affect any rights or obligations of a third party. Further, Noticee 2 has not defrauded any investor or client company and has always adhered to the business ethics of the industry.*

aa. *It is also relevant to mention herein that, without prejudice the submissions that there has been no contravention on part of the Noticee 2 as alleged or otherwise, the violations alleged in the Show Cause Notice are neither repetitive nor has the Noticee 2 made any gain or avoided any loss in course of the same.*

bb. *It is a well settled law that power to impose penalty includes power to impose no penalty in the given facts and circumstances. It is not that ever breach or error can be culpable even though it is possible to construe the same as a contravention. In a case, where a noticee demonstrate its bona fide and an authority is not able to demonstrate a noticee's mala fide, at the very least discretion needs to be applied to provide benefit of doubt to such a noticee. The case of Noticee 2 is squarely covered in this undisputed, settled principle. Noticee 2 has placed reliance on the judgement of* the Hon'ble Supreme Court's ruling in *SEBI* v. *Bhavesh Pabari*,[27] and Hon'ble SAT judgements in the matter of *Piramal Enterprises Limited* v. *SEBI*[28]*, P.G. Electroplast and others* v. *SEBI*[29] *in support for his contention.*

cc. *In several instances only the PMS has been charged by SEBI for such similar technical violations and directors of the PMS were not even charged. Noticee 2 has also placed reliance on the Adjudication order passed by SEBI in the matter of P.N. Vijay Financial Services Ltd*[30]*, where for similar violations of a company found under inspection conducted by SEBI, no director was charged.Noticee 2 has also placed reliance on the judgement of Hon'ble SAT in the matter of R.M. Shares Trading Pvt. Ltd.* v. *SEBI*[31]*.Accordingly, Noticee 2 has submitted that Ld. SEBI AO should* consider the holding of the Ld. AO in the aforementioned cases and in case of lapses, if any, he should not be held liable for the same.

dd. *SEBI AOs in the matter of Karvy Stock Broking Ltd. and Landmark Capital Advisors Ltd. had imposed a penalty of INR 8 lakhs and INR 7 lakhs (jointly and severally), respectively, on the directors of the company for violations similar to those alleged in the present SCN.*

[27] 2019 SCC OnLine SC 294.
[28] 2019 SCC OnLine SAT 134.
[29] 2019 SCC OnLine SAT 148.
[30] SEBI AO Order No. Order/AA/AR/2019-20/3528, dated June 28, 2019.
[31] SAT Appeal No. 204 of 2014, decided on August 07, 2014.

ee. Therefore, in any case Ld. AO cannot impose penalty more than what has been imposed on a Chairman-cum-Managing Director or on various parties, jointly and severally.

14. The relevant submissions made by Noticee 3 are summarized as under:

   a. *Noticee 3 denied the allegation levelled against him.*
   b. *KCL is a wholly owned subsidiary of M/s. Karvy Stock Broking Limited(KSBL), Hyderabad, Telangana. Both the companies were two separate entities with different Key Managerial Personnel (**KMPS**).*
   c. *KSBL is a primarily a stock broker and KCL is carrying out its operations as a Registered Portfolio Manager(PMS).*
   d. *KCL is managed by Managing Director/ Whole Time Director and the business operations of the company are centralized at their registered office in Mumbai. The books of Accounts and other records of PMS were maintained at their registered office as per the prescribed regulations of SEBI by KCL.*
   e. *He was head of Corporate Finance& Accounts Division of KSBL, Hyderabad and designated as Vice President(F&A) based out of Hyderabad.*
   f. *He was a Non-executive director of KCL during the inspection period and was not involved in day to day PMS business activities of the Company. Noticee 3 has provided copy of Form No.32 filed with MCA for appointment as non-executive director in support of his contention.*
   g. *He had not received any remuneration, compensation, fees or any kind of monetary or non-monetary benefits for being director in KCL. He had resigned to the directorship of KCL on December 11, 2019.Noticee 3 has provided copies of DIR-12 for cessation of director filed with MCA in support of his contention.*
   h. *He had attended the Board meetings of the company and did not participate in day to day management. The allegations in the SCN arise from analysis of day to day activities performed by the Whole Time Directors/ Executives/ Officials of KCL with regard to PMS operations of the company.*
   i. *Except for including his name as one of the Noticee, nothing specific has been attributed against him in the Notice in terms of as how he was involved in the day to day activities or that alleged activities had his approval or he was aware of it. While levelling the allegations in the Notice, it has been ignored and overlooked that Non-Executive Directors are not involved in day to day affairs of the company and they do not monitor on daily basis the day to day activities, which was lies in the domain of Whole Time Directors.*
   j. *Noticee 3 has placed reliance on the judgements of Hon'ble Supreme Court in the matter of Nandkishore Prasad vs. State of Bihar [(1978) 3 SCC 366], H.D. Jaisinghani vs.*

Naraindas N. Punjabi [(1976) 1 SCC 354], State of Haryana vs. Brij Lal Mittal & ors (1998) 5 SCC 343, Sham Sunder & Ors. V. State of Haryana, (1989) 4 SCC 630, Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors. (1983) 1 SCC, Hon'ble SAT order in the matter of Prithabaig vs. SEBI (Appeal No. 291 of 2017, decided on February 14, 2019), Sayanti Sen vs. SEBI (Appeal No. 163 of 2018 decided on August 09, 2019), Hon'ble WTM order of SEBI (WTM/GM/EFD/38/2017-18) dated August 03, 2017, WTM/GM/EFD/61/2018 dated October 03, 2018 in the matter of Home Trade Limited, SEBI Adjudication order no. AO/SBM/EAD-3/57/2017 in the matter of M/s. Brooks Laboratories Ltd., (ADJUDICATION ORDER NO: Order/PM/NS/2022-23/16157 in the matter of KCL, Adjudication proceedings in the matter of Landmark Capital Private Limited(AO order ORDER/BM/DS/2022-23/18838-18845) dated August 30, 2022 etc. for non-imposition of penalty against directors of the company.

k. *As per Section 27 of SEBI Act only any offence is committed by the company under this Act and any provision of SEBI Act has been violated only then the person responsible and in charge of conduct of the company will be held liable. This section was only amended on March 08, 2019 to include contravention of provision of this Act or any rule, regulation etc. The period of inspection is from April 01, 2018 to March 31, 2019 and further in the SCN no violation of any of the provisions of Section 27 of SEBI Act, 1992 has been alleged to warrant levy of any penalty on non-executive director.*

l. *Noticee 3 has placed reliance on the MCA circular bearing reference no. F.No. 16/1/2020-Legal dated March 02, 2020 addressed to all Regional Directors, all Registrar of Companies and all Official Liquidators providing clarification on prosecutions filed or internal adjudication proceedings initiated against Independent Directors, non-promoters and non-KMP non-executive directors-reg. The Circular further clarifies that civil or criminal proceedings are not unnecessarily initiated against the IDs or the NEDs unless sufficient evidence exists to the contrary.*

m. *Noticee 3 has also placed reliance on the circular issued by Reserve Bank of India(**RBI**) reference number CID.BC.89/20.16.001/2014-15 dated April 23, 2015 on "Collection and dissemination of Information on Defaulters", wherein it is abundantly clear that a Non-Whole Time Director should not be considered as a defaulter unless it is conclusively established that the default had taken place with consent or connivance. RBI has also adopted a practical view in labelling defaulters and excluding Non-Whole Time Director from its purview.*

15. The relevant submissions made by Noticee 4 are summarized as under:

a. *At the relevant time i.e. 2018-19, he was handling Retail Debt Market Segment in the company and had no involvement in PMS activities carried out by KCL.*
b. *In the SCN, based on the alleged breaches by KCL pertaining to its PMS activities, all the directors of KCL have been sweepingly roped in, without ascertaining the role and involvement of each of the director separately and individually.*
c. *The alleged breaches, admittedly, pertain to the activities which are in the realm of day-to-day operations of PMS activities of KCL and relate to compliances to be made by the then Whole Time Director and his team.*
d. *There is nothing in the SCN to remotely indicate his involvement in the alleged violations, pertaining to PMS activities, committed by KCL. Therefore, he cannot be saddled with the alleged acts of KCL in which he had no role to play.*
e. *With regard to liability of director for imposition of penalty for the violations committed by the company, Noticee 4 has placed reliance on the judgement of Hon'ble SAT dated 2.8.19 in the matter of P G Electroplast Limited vs SEBI (SAT Appeal No -281 of 2017).*
f. *In the present case also, save and except generically stating that KCL and its directors have committed violations, there is nothing specifically alleged qua him. Merely because he was director at the relevant time, he cannot be automatically made liable for the alleged violations committed by KCL. It may be noted that he was not the Whole Time Director or Managing Director of KCL at the relevant time. In fact, at the relevant time there was a dedicated Whole Time Director (viz. K G Deshpande) who was looking after and taking care of PMS operations of KCL.*

16. Relevant submissions made by Noticee 5 are summarized as under:

a. *He has been roped in, in the SCN, only on the basis that he was one of the directors of KCL during the relevant period (i.e., F/Y-2018-19).*
b. *The alleged breaches by KCL as set out in the SCN, pertain to the activities which are in the realm of day-to-day operations of PMS operations.*
c. *During the inspection period, he was not involved in the PMS activities of KCL which were dedicatedly looked after by Whole Time Director Mr. Kedar Deshpande, the compliance officer along with his team of officials and the operational team*
d. *He was a Director of KCL since May 2015 and he resigned as Director in July 2021. He was Business Head of Distribution of Financial Products in Karvy Stock Broking Ltd (KSBL) reporting to the Chairman Mr. C. Parthasarathy.*
e. *He has been roped in, without ascertaining the role and involvement of each of the director separately and individually.*

f. *Compliance/operational activities pertaining to PMS, is not something which passes through the board members of KCL or is placed for approval in the Board meetings of KCL.*
g. *In the Board meetings, broadly following matters pertaining to PMS activities were place before the Board: a) Status of Investors complaints b) Financial results c) PMS performance report d) Whole Time Director Mr. Kedar Deshpande is to give presentation on the business performance.*
h. *In the instant matter the alleged breaches committed by KCL pertaining to PMS activities, he cannot be held liable or responsible.*

17. The relevant submission made by Noticee 6 are summarized as under:

a. *He was not aware that his name was appeared in the SCN as, he is not associated with Karvy Group since January 2020 and did not have access to the email id's associated with Karvy group. He was not informed by Karvy group regarding the receipt of the said SCN at any point of time.*
b. *He was incorrectly framed by the management of Karvy group to the person responsible for managing the affairs of KSBL and therefore, he had been made a part of investigation and proceedings initiated by multiple agencies.*
c. *He was either a part of decision making nor privy to any information related to KCL.*
d. *Mere designations are not adequate to hold a person liable for the affairs of the company. In order to held a person liable, a person has to be entrusted with whole or substantially large affairs of the company for the alleged violations. Noticee has also placed reliance on the judgement of Hon'ble Supreme Court in the matter of Ramchandiram Mirchandani vs. The India United Mills Ltd., AIR 1962 and Commissioner of Income-Tax, Kerala vs. Alagappa Textile (Cochin) Ltd. 1980.*
e. *He was working with Karvy Stock Broking Limited ("**KSBL**") and was looking after its Business Development of Retail Broking activities. KCL was a wholly owned subsidiary of KSBL and I was appointed as a Non-Executive Director of KCL at the behest of the management of KSBL.*
f. *He has not been associated with KSBL since January, 2020 on account of non-receipt or irregular receipt of Salaries since past few months and other reasons.*
g. *In July 2020, he was approached to sign a physical resignation letter again for filing DIR-12.*
h. *Noticee 6 has denied allegation levelled against him.*

i. He has been a victim of illegal acts of KSBL wherein I have suffered a loss on personal investment of Rs. 99,41,280/- including of around 72 lakhs and other investments maintained in the Demat account at KSBL made as a client.

j. The inspection in respect of which the SCN is issued was conducted in December 2019 and the findings of the same were communicated in September 2020. The present SCN was issued on 02.11.2021 was served in September 2022. Thus, the proceedings have been initiated after inordinate delay of almost 3 years. Noticee 6 has placed reliance on the judgements of Hon'ble SAT in the matter of Ashok Shivlal Rupani & Anr. vs. SEBI (Appeal No. 417 of 2018 dated August 22, 2019, Mr. Rakesh Kathotia vs. SEBI (Appeal No. 07 of 2016) dated May 27, 2019 to support his contention.

k. The SCN has been squarely issued to him merely because he was a Director of KCL.

l. There are no findings or adverse observations against him as a Director in the SCN/ Annexures thereof with respect of the alleged violations. Thus, apart from being a Director, there are no other grounds against him in the present proceeding.

m. The proceedings have been initiated without consideration, assessment and enquiry into the facts and merits regarding his individual roles, responsibilities, involvement, decision making powers etc. as Director in KCL.

n. This is a case of vicarious liability and it is a well settled principle of law also upheld by Hon'ble SAT in many of its order that a person cannot be considered as a "Officer in Default" (present Sec 2(60) of the Companies Act) merely for being a Director of the Company. In this regard, Noticee 6 has placed reliance on the judgements of Hon'ble SAT in the matter of Pritha Bag vs. SEBI (Appeal No. 291 of 2017 dated February 14, 2019) and Sayanti Sen vs. SEBI (Appeal No. 163 of 2018 dated August 9, 2019.

o. He has not been provided the copy of pre-inspection questionnaire, which may contain important information related to like name and roles of person in charge of departments, details of person interacting with inspection team, composition of investment committee, if any etc.

p. Documents or information relevant to or relating to his role in the alleged contraventions of PMS regulations and circulars were not provided to him and it was just informed that charges were framed in capacity as director of the company.

q. His request for cross-examination of other co- Noticees and SEBI inspection team has not been acceded to.

r. The Annexure-7 to SCN w.r.t. disclosure documents is dated September 06,2019, whereas inspection period was 2018-19. Thus, the documents which has been relied upon by SEBI, is filed after the inspection period.

s. Adverse inferences have been drawn against him merely based on his purported appointment as a Director without further considering his assignment, roles and *responsibilities purely as an employee of Karvy Stock Broking Limited, one of the group companies of KCL. The fact that he was a Non-Executive Director has not been considered. His appointment at KCL was made at the behest of the management of KSBL. Pertinent to note that even as a Nominee Director, he was not allotted a single share. Noticee has provided relevant extracts of Director report for the inspection period to support his contention wherein his name is specified as Non-Executive Director.*

- t. *He was a full time Employee of KSBL and was looking after Client acquisition, servicing and Branch co-ordination for retail broking business. Noticee has submitted Form No. 16 from KSBL for the F.Y. 2018-19 to support its contention.*
- u. *He had not drawn any remuneration from KCL. Noticee has submitted the relevant extracts of Directors Report for 2018-2019 and disclosure in respect of related parties made in Section 7 (ii) of Disclosure Document Dated 16.09.2019 to support its contention.*
- v. *He was not involved in any affairs including day to day affairs of KCL. He did not have any knowledge, control, rights, authority or decision making powers related to the affairs of the company. None of the Communications related to KCL were ever marked to him. He was not a part of any activity related to Portfolio Management Services in specific. He had no role whatsoever in Operations, Sales, Investment decisions or any other functional areas related to KCL. Thus, except for his name being a Director in KCL, he was not even remotely associated with it directly or indirectly. Noticee has submitted an email dated August 29, 2019 received from Company Secretaries to support his contention.*
- w. *He was appointed as Non-Executive Director of KCL from May 29, 2015 Schedule V of PMS Regulation requires every Portfolio Manager to disclose the details of Promoters of Portfolio Manager, Directors and their backgrounds. No experience related to Portfolio Manager Activities has been specified in the Disclosure Document dated September 16,2019. This itself is indicative of the fact that he was not associated with any activities related to Portfolio Management Services.*
- x. *The allegations in the SCN are related to violations of PMS Regulations and related circulars that were observed during the inspection for the financial year 2018-2019. Pertinent to note that he had no knowledge regarding inspection till the receipt of SCN. He had not been a part of any communication related to inspection at any point of time.*
- y. *He was not a signatory to any documents including Disclosure Documents or Financials or any other documents related to Portfolio Management Services. Noticee has submitted relevant extracts of financial statements for the F.Y 2015-2016 to 2020-2021 in support of his contention.*
- z. *The adverse observations in respect of the alleged violations of Open positions in respect of allocation of securities, Reduction in corpus of Clients and outsourcing of Core business activities are related to Operations Department and Termination of Agreement and KYC*

norms, failure to disclosure penalties/ litigations or proceedings are related to Compliance matters. He had no knowledge or role or responsibility in respect of the said issues as they were independently handled by the respective departmental heads/ other Directors. None of the KCL Employees of KCL have been reporting to him. Accordingly, Noticee 6 has requested to drop the allegation levelled against him.

aa. Noticee has also placed reliance on the Adjudication orders in the matter of Landmark Capital Advisors Private Limited dated August 30, 2022 and Karvy Stock Broking Limited dated November 15, 2022.

bb. Section 27(1) and 27(2) of the SEBI Act, at the relevant time provides only for offences by companies.

cc. Regulation 2(d) of PMS Regulations defines Principal Officer as a person who is designated as such by the portfolio Manager. Regulation 23 A provides that the Compliance Officer shall be responsible for the monitoring the compliance of the Act, Rules, Regulations etc.

dd. As per the amendment applicable w.e.f. February 10, 2012 the disclosures documents are required to be signed by at least 2 directors. Prior to this amendment, the Disclosure Document was required to be signed by all the directors.

<u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS</u>

18. I have carefully perused the charges levelled against Noticees in the SCN and the material available on record. I have also perused the submissions made by Noticees in this regard. The issues that arise for consideration in the present case are:

    I. Whether Noticees have violated the provisions as mentioned in para 3 of the order?
    II. Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?
    III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

19. Before proceeding to the merits of the matter, I find it pertinent to deal with preliminary objection raised by Noticees 1, 2, 4, and 6. Noticees 1, 2, 4, and 6, in their replies, have contended that the alleged violations related to the period 2018-19 and SCN has been issued on November 02, 2021 and served to them in 2022. Noticees 1, 2, 4, and 6 have stated that the said inordinate delay in the issuance of SCN has severely prejudiced them and that the said inordinate delay has not been explained by SEBI. The aforesaid Noticees have placed reliance on the order passed by Hon'ble SAT in the matter of Ashlesh Shah vs. SEBI (SAT appeal no.169 of 2019), Ashok Shivlal Rupani & Anr. Vs SEBI (SAT appeal no. 417 of 2018) etc. in support of their contention. Apart from the above judgements, Noticee 2 has also

placed reliance on the judgement of Hon'ble SAT in the matter of SIC Stock & Services Pvt. Ltd. v. SEBI (Appeal No. 639 of 2021), Ashok Kumar Kayan v. SEBI (SAT order dated September 21, 2022), Sanjay Jethalal Soni vs. SEBI (Appeal no. 102 of 2019), HB Stock Holdings Limited vs. SEBI (Appeal no. 86 of 2011 decided on April 25, 2012) and Hon'ble Supreme Court of India in the matter of Rajeev Bhanot vs. SEBI (Civil Appeal No. 6441-6443 of 2021).

20. I have perused the decisions cited by Noticees 1, 2, 4, and 6 with regard to the delay in the issuance of SCN. I note from the aforementioned judgements of the Hon'ble SAT and Hon'ble Supreme Court that it has become trite law that SCN must be issued within reasonable period of time and what constitutes a reasonable period would depend on facts and circumstances in each case, nature of default/statute, prejudice caused, whether the third party rights had been created, etc. I note from the material available on the record that in the present case, the inspection in the present matter was carried out by SEBI on December 05, 2019 to December 13, 2019, covering the inspection period from April 01, 2018 to March 31, 2019.

21. The finding of the inspection was communicated to Noticee 1 on September 08, 2020. Accordingly, Noticee 1 furnished its reply on September 18, 2020, October 01, 2020, and October 27, 2020. After considering the replies provided by Noticee 1 on merit, based on replies received from Noticee 1, SEBI has recommended adjudication proceedings for the alleged violations by Noticees. The same was approved by Competent Authority of SEBI on April 15, 2021. The undersigned was appointed as the Adjudicating Officer vide order dated June 21, 2021. Subsequently, certain clarification was sought from SEBI in the month of September 2021. After receipt of requisite clarification on October 26, 2021, the SCN in the matter was issued on November 02, 2021. Thus, I note that there has been no delay in the issuance of SCN and the SCN has been issued in a reasonable period of time, which also includes a period of the Covid pandemic.

22. I note that Noticees 1,2,4 and 6 have merely stated that prejudice has been caused to them due to the alleged delay. However, the aforesaid Noticees have failed to state as to what record/document / evidence could not be accessed/obtained by them because of the alleged passage of time. From the material placed on record, I observe that after the issuance of SCN, adequate opportunities were granted to aforesaid Noticees, to represent their case and opportunities, of personal hearing were also granted to aforesaid Noticees. I note that Noticee 6, vide his email dated October 03, 2022, requested for inspection of the documents and the same was provided to him. Similarly, Noticee 2 through its AR, requested for inspection of documents and sought additional documents. The inspection of documents was provided to Noticee 2 and the documents which were relevant for the present proceedings were also

provided to Noticee 2 during the course of inspection of documents and subsequently. I note that Noticees 1, 2, 4, and 6 filed replies along with the certain documentary proof with regard to the allegations levelled against them in the SCN. Thus, looking at the material available at the disposal of aforesaid Noticees, I find that Noticees 1, 2, 4, and 6 have been provided with all material that would have been abundantly adequate to facilitate the recollection of events or collection of relevant data and thereby enabling them to form a definite defence to the charges in the SCN, which Noticees 1, 2, 4, and 6 have provided through their individual replies/ submissions. Therefore, I do not find any merit in the contention raised by Noticees 1, 2, 4, and 6 that there has been an inordinate delay in the issuance of SCN due to which prejudice has been caused to them.

23. In this regard, I place reliance on the judgement of the Hon'ble Supreme Court in the matter of Adjudicating Officer, SEBI vs. Bhavesh Pabari (decided on February 28, 2019) in which it was held that:
"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc."

24. Thus, in view of aforesaid facts and placing reliance on the aforesaid judgments, I find that instant adjudication proceeding has been initiated within a reasonable period of time and no prejudice has been caused to Noticees 1, 2, 4, and 6. I also note that the facts and circumstances of the present proceedings are not similar to those in the judgments quoted by Noticees 1, 2, 4, and 6. Therefore, I do not find any merit in the contention raised by Noticees 1, 2, 4 and 6 that there had been an inordinate delay in the issuance of SCN due to which prejudice has been caused to them.

25. After dealing with the aforesaid preliminary objection of Noticees 1, 2, 4, and 6, I now proceed to deal with this case on merits.

26. Before proceeding to examine the matter, I find it pertinent to reproduce the aforesaid regulatory provisions of PMS Regulations, 1993, and other relevant circulars issued by SEBI which are as under:

Regulation 13

Code of Conduct – Every *portfolio manager shall abide by the Code of Conduct as specified in Schedule III*

Regulation 14(1)(b): - *The agreement between the portfolio manager and the client shall, inter alia, contain:*

i. the investment objectives and the services to be provided;
ii. areas of investment and restrictions, if any, imposed by the client with regard to the investment in a particular company or industry;
iii. type of instruments and proportion of exposure;
iv. tenure of portfolio investments;
v. terms for early withdrawal of funds or securities by the clients;
vi. attendant risks involved in the management of the portfolio;
vii. period of the contract and provision of early termination, if any;
viii. amount to be invested subject to the restrictions provided under these regulations;
ix. procedure of settling client's account including form of repayment on maturity or early termination of contract;
x. fees payable to the portfolio manager;
xi. the quantum and manner of fees payable by the client for each activity for which service is rendered by the portfolio manager directly or indirectly (where such service is out sourced);
xii. custody of securities;
xiii. in case of a discretionary portfolio manager condition that the liability of a client shall not exceed his investment with the portfolio manager;
xiv. the terms of accounts and audit and furnishing of the reports to the clients as per the provisions of these regulations; and
xv. other terms of portfolio investment subject to these regulations

Regulation 14 (2)(a): - *The portfolio manager shall provide to the client, the Disclosure Document as specified in Schedule V, along with a certificate in Form C as specified in Schedule I, at least two days prior to entering into an agreement with the client as referred to in sub-regulation (1).*

Regulation 15(1A): - *The portfolio manager shall not accept from the client, funds or securities worth less than twenty-five lacs rupees.*

Provided that the minimum investment amount per client shall be applicable for new clients and fresh investments by existing clients:

Provided further that existing investments 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 the investment

Regulation 16(5): - *The portfolio manager shall, ordinarily purchase or sell securities separately for each client. However, in the event of aggregation of purchases or sales for economy of scale, inter se allocation shall be done on a pro rata basis and at weighted average price of the day's transactions. The portfolio manager shall not keep any open position in respect of allocation of sales or purchases effected in a day.*

Clause I of Schedule III: *- 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*

Clause III- 4 of Schedule-**V**:

Penalties, pending litigation or proceedings, findings of inspection or investigations for which action may have been taken or initiated by any regulatory authority.

i. *All cases of penalties imposed by the Board or the directions issued by the Board under the Act or Rules or Regulations made thereunder.*
ii. *The nature of the penalty/direction.*
iii. *Penalties imposed for any economic offence and/ or for violation of any securities laws.*
iv. *Any pending material litigation/legal proceedings against the portfolio manager/key personnel with separate disclosure regarding pending criminal cases, if any.*
v. *Any deficiency in the systems and operations of the portfolio manager observed by the Board or any regulatory agency.*
vi. *Any enquiry/ adjudication proceedings initiated by the Board against the portfolio manager or its directors, principal officer or employee or any person directly or indirectly connected with the portfolio manager or its directors, principal officer or employee, under the Act or Rules or Regulations made thereunder*

Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011*: -* ***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.*

Clause 6 of SEBI Circular no. CIR/MIRSD/66/206/dated July 21,2016*: In the first phase, the registered intermediaries shall upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 1, 2016, wherever KYC is required to be carried out as per the circulars issued by SEBI from time to time and accordingly, shall take steps to prepare their systems for uploading the KYC data*.

Clause 1 & 2 of SEBI Circular no. MIRSD/Cir-120/2016 dated November 10, 2016*:*

1. *This has reference to SEBI circular no. CIR/MIRSD/66/2016dated July21, 2016 on operationalisation of Central KYC Records Registry (CKYCR) wherein the registered intermediaries were directed to upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 01, 2016.*

2. *Government of India, vide its letter dated October 04, 2016, has directed as follows with regard to KYC details of existing and new individual clients:*

   a. *Registered intermediaries have to update their IT systems as well as register all new accounts of individuals in accordance with the CKYCR template, mandatorily by October 31, 2016.*
   b. *Mutual funds and Intermediaries other than mutual funds may follow the following time lines in respect of uploading KYC data of the existing individual clients with CKYCR.*
   i. *Mutual funds may ensure 30% completion of uploading of existing KYC data by November 30, 2016, another 30% of KYC data by January 31, 2017 and the rest 40% data by March 31, 2017.*
   ii. *Intermediaries other than mutual funds may ensure 50% completion of uploading of existing KYC data by November 30, 2016 and the remaining 50% of KYC data by December 31, 2016.*

27. I now proceed to deal with the aforementioned allegations levelled against Noticees in the SCN, the submissions made by Noticees in this regard and record my observations/ findings as under:

ISSUE 18 I: Whether Noticees have violated the provisions as mentioned in para 3 of the order?

28. From the inspection report, I note that Noticee 2 was the Whole Time Director of Noticee 1 and Noticees 3 to 6 were the directors of Noticee 1. I also note that Noticees 2 to 6 in their replies have not denied that they were the directors of Noticee 1. However, Noticces 3 and 6 in their respective reply have submitted that they were the Non-Executive Directors of Noticee

1. I note that it has not been specified in the inspection report of SEBI that whether Noticees 3 to 6 were the Executive or Non-Executive Directors of the company.

29. Noticee 2 in his reply has stated that he was appointed as director of Noticee 1, w.e.f. August 10, 2015, but he was merely working under the directions/instructions of the Board of Directors of KCL and reported to Mr. C. Parthasarathy, Group Chairman and Managing Director. I note that Noticee 2 has not provided any documentary evidence to show that he was merely working under the directions of the Board of Directors of Noticee 1 and was reporting to Mr. C. Parthasarathy, Group Chairman and Managing Director. In absence of any documentary evidence, I am not inclined to accept the said contention of Noticee 2.

30. Noticee 2 has contended that he was not involved in the day to day management of Noticee 1 and merely supervised the Portfolio Management Service team which was appointed by the Board of Directors. Noticee 2 has also contended that unless there are specific allegations and averments against him, delineating his precise role in the alleged violations, he cannot be held to be responsible for the alleged violations. Noticee 2 has further contended that neither the SCN nor the documents obtained from SEBI during inspection demonstrate that he was liable for any of the alleged violations and there was no cogent material against him establishing his role in the non-compliance.

31. Noticee 2 has contended that he was not involved into day to day affairs of Noticee 1 and he should not be held liable as an officer in default. Further, it has been contended that as per Regulation 23A of PMS Regulations,1993, every portfolio manager has to appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the Board or the Central Government and for redressal of investor grievances, and compliance officer has to immediately and independently report to the Board any non-compliance observed by him. Thus, Noticee 2 has contended that although he was director in Noticee 1, he was not responsible for the day-to-day affairs of Noticee 1 and he was not appointed as the compliance officer in terms of Regulation 23A of the PMS Regulations,1993. Noticee 2 has further contended that it was not his responsibility to ensure compliance with the regulatory landscape that is prevalent in Noticee 1 and there is a statutory responsibility fastened on the compliance officer of Noticee 1 to ensure compliance with the regulatory landscape. Noticee 2 has also submitted that in light of this statutory responsibility and in the absence of any material on record to suggest that he was responsible for either compliance with the PMS Regulations,1993 or was made aware of any non-compliance observed by such compliance officer, he should not be considered as officer in default and cannot be held liable only by

virtue of his designation as a director in the company and can be held liable only of he was an officer is in default.

32. Noticee 2 in his reply has also submitted that the alleged lapses are technical, venial and procedural in nature and hence no penalty should be imposed for the same. Noticee 2 has also placed reliance on the judgements of Hon'ble SAT in the matter of Dr. Uppal Kumar vs. SEBI (2019 SCC online SAT 202), Sayanti Sen vs. SEBI (2019 SCC online SAT 132), PG. Electroplast Ltd. vs. SEBI (Order dated 02.08.2019 in Appeal No. 281 of 2017), Hon'ble Supreme Court judgement in the matter of SEBI vs. Gaurav Varshney(2016 SCC On Line SC 706), Hon'ble SAT order in the matter of Soumen Chatterjee vs. SEBI(SAT Appeal No. 27 of 2020, dated 07.01.2021), Amit Mishra v. SEBI(2021 SCC Online SAT 998), Adi Cooper vs. SEBI (SAT Appeal No. 124 of 2019 decided on 05.11.2019), Subhra Jyoti Sardar v. SEBI (2021 SCC Online SAT 85).

33. In this regard, I note from the Inspection Report that Noticee 2 was the Executive Director /Whole Time Director of the Company at the relevant time and the same has not been denied by Noticee 2. At this juncture, it is pertinent to refer the definition of Executive Director/ Whole Time Director as defined in Companies (Specification of definitions details) Rules, 2014 and Companies Act 2013.

"Rule 2(1)(k) of the Companies (Specification of definitions details) Rules, 2014 "Executive Director" means a Whole Time Director as defined in clause (94) of section 2 of the Act"

Clause 2(94) of Companies Act, 2013 ""whole-time director" includes a Director in the whole-time employment of the company."

34. Thus, as per the aforesaid definition, Director includes a director who is in the Whole Time Employment of the company. At this juncture, I place reliance on the judgement of Hon'ble SAT in the matter of Dhyana Finstock Ltd. dated June 10, 2022, wherein it was held by Hon'ble SAT that:

"*19 The Company being an artificial juridical person acts through its Board of Directors. Noticee no.1 is the Company and noticee nos.2, 3 and 4 were the Directors. Noticee nos.2 and 3 only have filed appeals against the impugned orders. During the pendency of the appeals, noticee no.2, Harshad Kumar Patel, died on 7th May, 2021 and, therefore, the appeals of noticee no.2 being Appeal no.301 and 302 of 2021 was dismissed as abated by our order dated 22nd November, 2021. Insofar as noticee no.3 is concerned, he was not only a Promoter and an Executive Director but was also the Chairman of the Company. The contention raised before this Tribunal that he was not involved in the day to day running of* *the Company is apparently misconceived and an afterthought in as much as the day to day management of the Company was conducted by the Chairman and the Managing Director, noticee no.3 in consultation with the other Directors…….".*

35. Therefore, I note that the Company being an artificial juridical person acts through its Board of Directors. In the instant case, Noticee 1 is the Company and Noticee 2 is the Executive Director/ Whole Time Director of the Company. I note that out of 5 directors during the inspection period, Noticee 2 was the only Whole Time Director of Noticee 1 and Noticees 3 to 6 were the Non-Executive Directors of Noticee1. Therefore, I note that Noticee 2, as the sole Whole Time Director of Noticee 1, was responsible for the conduct of the business of Noticee 1 at the relevant time. Even though PMS Regulations,1993 provides for liability on compliance officer to monitor the compliance, I am inclined to the view that it is the Whole Time Director i.e. Noticee 2, who was in charge of and was involved in the day to day affairs of Noticee 1 at the relevant time. Therefore, I find that Noticee 2 is liable for the day to day affairs of Noticee 1 in the capacity of the sole Whole Time Director of Noticee 1. Accordingly, I find that the contention raised by Noticee 2 that he was not involved in day to day running or affairs or management of Noticee 1 is incorrect and Noticee 2 cannot absolve his liability in this regard merely by stating that it was the responsibility of compliance officer to monitor the compliance.

36. In this regard, I also place reliance on the order of Hon'ble Supreme Court of India in the matter of N. Narayanan vs. Adjudicating Officer, SEBI (2013) 12 SCC 152, wherein it was held that:

"33…. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

37. Further, Hon'ble SAT in the matter of Mr. Girish Chandra Mukundram Baluni Vs. SEBI (Appeal No. 569 of 2020) dated 17.06.2022, has held as follows:

"*16. It can be seem from the record besides the present OCDs, the company had also issued Non-Convertible Debentures (hereinafter referred to as 'NCDs') in violation of the same provisions. Therefore, various orders against the company as well as some of the present noticees who were alleged to be director during the period was initiated by respondent SEBI. Respondent SEBI ultimately held the company as well as the directors responsible for violation of the provisions of the Companies Act and ICDR Regulations. Similarly, various appeals were preferred before this Tribunal. This Tribunal on the basis of the provisions of Section 5 of the Companies Act held all the directors liable…"*

38. In view of the above and placing reliance on the aforesaid judgements, I find that the contentions raised by Noticee 2 are not valid.

39. Further, I have also perused the judgements as well as AO's Orders referred by Noticee 2. I note that the facts involved in the judgements referred by Noticee 2 are different from the present matter. Therefore, I find that the said judgements are not applicable in the present matter.

40. In view of the above, I find that Noticee 2 being Whole Time Director of Noticee 1 is liable for the contraventions by Noticee 1.

41. Noticee 2 has also contended that pursuant to inspection, SEBI has the power to take action including the issuance of a letter for corrective action listing out cases of non-compliance, and various Circulars / Guidelines issued thereunder from time to time, Cases of Deficiency, Cases of Advice or issues an Administrative Warning. In this regard, Noticee 2 has placed reliance on the judgements of Hon'ble SAT in the matter of M/s. DSE Financial Services Limited v. SEBI (2012 SCC Online SAT 159), UPSE Securities Limited vs. SEBI (2011 SCC Online SAT 86), ACML Capital Markets Limited v. SEBI (Order dated 29.06.2022 in Appeal No. 100 of 2020), P.G. Electroplast Limited (Order dated 02.08.2019 in Appeal No. 281 of 2017) and Hon'ble Supreme Court judgement in the matter of Hindustan Steel Limited v. State of Orissa (1969 (2) SCC 627). Further, Noticee 2 in his reply has also contended that in the past, SEBI has not charged the directors in the PMS inspection cases and only the PMS has been charged and there was no reason to discriminate and to be non-uniform. In support of his contention, Noticee 2 has placed reliance on the judgement of P.N. Vijay Financial Services Ltd. (SEBI AO Order No. Order/AA/AR/2019-20/3528, dated June 28, 2019).

42. W.r.t. contention mentioned in para 39 above, I note that this contention of Noticee 2 to be more in nature of questioning SEBI's policy regarding enforcement actions in such matters

and find this to be outside the purview of the present adjudication proceedings. Therefore, I am not inclined to deal with this contention of Noticee 2. Further, I have perused the judgement quoted by Noticee 2. On perusal of the same, I note that the facts of the above cases are different from the facts of the present proceedings and therefore, the said judgements are not relevant to the present proceedings.

43. As regards the stated allegations against Noticces 3 to 6, Noticees 3 and 6 in their respective replies have submitted that they were the Non-Executive Directors of Noticee 1. Noticee 6 in his reply to SCN has provided a copy of the Annual Report for the year 2018-19, wherein it has been mentioned that he was the Non-Executive Director of Noticee 1. Noticee 6 has also provided Form DIR-12 filed with the Ministry of Corporate Affairs (**MCA**), in support of his contention to show that he was Non-Executive Director of Noticee 1. Similarly, Noticee 3 in his reply to SCN, provided a copy of Form-32 filed with MCA for appointment as Additional Director and subsequently Non-Executive Director of Noticee 1 in support of his contention.

44. Noticees 3 to 6 in their replies have contended that they were not looking after day to day affairs of the Noticee 1.

45. Noticee 3 in his reply to SCN submitted that he was the head of Corporate Finance & Accounts Division of Karvy Stock Broking Limited and was designated as Vice President (F&A) based out of Hyderabad. Noticee 3 has also contended that except for including his name as one of the Noticee, nothing specific has been attributed against him in the Notice in terms of as to how he was involved in day to day activities or that the alleged activities had his approval or he was aware of it. Noticee 3 has further contended that as per Section 27 of SEBI Act, he should not have been held liable. Noticee 3 has placed reliance on the judgements of Hon'ble Supreme Court in the matter of Nandkishore Prasad vs. State of Bihar (1978 3 SCC 366), H. D. Jaisinghani vs. Naraindas Punjabi (1976)1 SCC 354), State of Haryana v. Brij Lal Mittal & Ors. (1998) 5 SCC 343, Sham Sunder & Ors. Vs. State of Haryana ((1989) 4 SCC 630), Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors.(1983)1 SCC, Hon'ble SAT judgements in the case of Prithabaig vs. SEBI(Appeal No. 291 of 2017), Sayanti Sen vs. SEBI (Appeal No. 163 of 2018), SEBI WTM order no. WTM/GM/EFD/38/2017-18 dated August 03, 2017, SEBI Adjudication Order no. AO/SBM/EAD-3/57/2017 in the matter of M/s. Brooks Laboratories Ltd., Adjudication Order no. Order/PM/NS/2022-23/16157, Adjudication order in the matter of Landmark Capital Private Limited dated August 30, 2022 etc. in support of its contention. Further, Noticee 3 has placed reliance on the MCA circular bearing reference no. FNO. 16/1/2020-Legal dated March 02, 2020 and RBI circular DBR. No. CIDC.BC.89/20.16.001/2014-15 dated April 23, 2015 wherein directors were not held responsible for the day to day activities of the company.

46. Noticee 6 in his reply has contended that he was not having any knowledge, control, rights, authority or decision making powers related to the affairs of Noticee 1. Noticee 6 in his reply has further stated that he was a full time employee of KSBL and was looking after client acquisition, servicing and branch co-ordination for retail broking business. Noticee 6 has also provided an email dated August 29, 2019 received from Y. Sailaja Vice President and Company Secretary of the Karvy Stock Broking, requesting them to provide KRA for 2019-2020.

47. Noticee 6 in his reply has further contended that as per Section 27(1) and (2) of SEBI Act, the word, "Offence" in the earlier provisions was replaced by the word "Contravention" w.e.f. March 08, 2019 by way of amendment in SEBI Act. Noticee 6 has contended that since the inspection period as per the SCN was April 01, 2018 to March 31, 2019, Section 27(1) and (2) of SEBI Act was not applicable for a large part of the inspection period. Noticee 6 in his reply has also placed reliance on the Adjudication Order in the matter of Landmark Capital Advisors Private Limited dated August 30, 2022, Karvy Stock Broking Limited dated November 15, 2022, where the non-executive director was, *inter-alia,* exonerated on the ground that the concerned Noticee had no involvement in day to day activities in view of non-availability of material showing involvement. Noticee 6 in his reply has further contended that as per Section 27(1) and (2) of SEBI Act, the word, "Offence" in the earlier provisions was replaced by the word "Contravention" w.e.f. March 08, 2019 by way of amendment in SEBI Act.

48. W.r.t. Noticces 3 and 6 contentions that they were the Non-Executive Directors of the company, I have also perused the Form -DIR-12 filed with MCA by Noticee 1 as provided by Noticee 6 and Form no. 32 provided by Noticee 3. On perusal of the same, I note that Noticees 3 and 6 were shown as the Non-Executive Directors of Noticee 1. I have also perused Annual Report of the year 2018-19, provided by Noticee 6. On perusal of the same, I note that Mr. G. Krishna Hari i.e. Noticee 3, Mr. V. Mahesh, Mr. P.B. Ramapriyan i.e. Noticee 5, Mr. K.P. Jeevan i.e. Noticee 4, and Mr. Rajiv Ranjan Singh i.e. Noticee 6 were shown as the Non-Executive Directors of Noticee 1 for the relevant period. Thus, I find merit on the submission made by Noticees 3 and 6 that they were the Non-Executive Directors of Noticee 1 during the relevant period.

49. Noticee 4 in his reply has contended that all the directors of Noticee 1 had been sweepingly roped in, based on alleged breaches by Noticee 1 pertaining to its PMS activities, without ascertaining the role and involvement of each of the director separately and individually. Noticee 4 in his reply has also submitted that he was handling day to day management and

operations of Debt Products Vertical of KCL and he was reporting to group CMD. Noticee 4 has also contended that at the relevant time, the concept of vicarious liability was not there, and the said concept was introduced only on March 08, 2019 consequent to amendments made in Section 27 of SEBI Act. Noticee 4 in his reply has placed reliance on the Adjudication Orders passed in the matter of Landmark Capital Advisors Private Limited dated August 30, 2022, Hon'ble SAT order dated August 02, 2019 in the matter of PG Electroplast Limited (SAT appeal no. 281 of 2017), and ACML Capital Markets Ltd. dated June 29, 2022, wherein no penalty has been imposed on the director of the company. Noticee 4 has also contended that at the relevant time, the concept of vicarious liability was not there, and the said concept was introduced only on March 08, 2019 consequent to amendments made in Section 27 of SEBI Act. Noticee 4 has also placed reliance on the order passed by Hon'ble WTM of SEBI in the matter of V B Industries Ltd.

50. Noticee 5 in his reply has stated that he was business head of Distribution of financial products in Karvy Stock Broking Ltd. and reporting to the Chairman of Karvy Stock Broking Ltd., Mr. C. Parthasarathy. Further, Noticee 5 has contended that, in the Board meetings, broadly matters related to status of investors complaints, financial results, PMS performance report etc. were placed before the Board of Directors of Noticee 1.

51. In this regard, as mentioned earlier in the order, on perusal of Annual Report for the year 2018-19, as provided by Noticee 6 in his reply to SCN, I note that Noticees 4 and 5 were the Non-Executive Directors of Noticee 1.

52. As regards the contention raised by Noticees 3 to 6, it is pertinent to refer Section 149(12) of Companies Act, 2013 which is reproduced as under: -

***Section** 149**(12) of Companies Act, 2013: -** Notwithstanding anything contained in this act,*
(i) an independent director;
(ii) a non-executive director not being promoter of key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

53. From the above, I note that it is a trite law that Non-Executive Directors could be held liable only for acts of commission or omission of company which occurred with their knowledge attributable through board process, consent or connivance or have not acted diligently.

54. Noticees 3 to 6 in their replies have contended that they were not involved in day to day affairs of the company. In this regard, I note that there are no Board minutes available on record to

show that Noticees 3 to 6 were aware about the contraventions by Noticee 1 as mentioned in the SCN and that these decisions were routed through Board processes. Further, I note that there are no other documents available on record to show that the allegations mentioned in the SCN occurred with the knowledge, consent or connivance of Noticees 3 to 6. I am also conscious of the fact that apart from their role as directors of the company, SEBI has not detailed any other involvement of Noticees 3 to 6 in the alleged violations observed during the course of inspection. Other than merely making a bald statement that Noticees 3 to 6 were directors of Noticee 1, I note that there is no evidence placed on record by SEBI to show that Noticees 3 to 6 had any knowledge, control, rights, authority or decision making powers related to the affairs of Noticee 1.

55. I have also perused the judgement/ orders/ references etc., submitted by Noticees 3, 4 and 6 in their individual replies. On perusal of the same, I find that the judgements/ orders provided by Noticees 3,4 and 6 squarely apply in the case of Noticees 3 to 6. Therefore, I do not find any merit to deviate from the aforesaid judgements or orders. In view of the above, I find that the role of Noticees 3 to 6 cannot be conclusively established as regards to their day to day involvement in the said default of Noticee 1. Accordingly, I am inclined to give benefit of doubt to Noticees 3 to 6 in this regard. In view of the aforesaid, I find that allegations levelled against Noticees 3 to 6 that they have violated the provisions as mentioned in para 3 of the order does not stand established.

56. It has been alleged in the SCN that on several instances, Noticees had kept open positions in respect of allocation of sales or purchases effected in a day and thus violated Regulation 16(5) of PMS Regulations, 1993.

57. I note from the material available on record that in the following instances, Noticee 1 had kept the open-positions for 5 to 12 days:

Date	**Name of the security**	**No. of Securities lying as at end of the day**	**Name of the strategy**
24/01/2019	ICICI Prudential Mutual Fund Money Market Fd Direct Pl Cumulative	82,997.283	AEGIS
28/01/2019	ICICI Prudential Mutual Fund Money Market Fd Direct Pl Cumulative	27,329.389	AEGIS
08/02/2019	ICICI Prudential Mutual Fund Money Market Fd Direct Pl Cumulative	9,541.476	AEGIS
14/02/2019	ICICI Prudential Mutual Fund Money Market Fd Direct Pl Cumulative	36,353.937	AEGIS
30/03/2019	Aye Finance Private Limited Series 01-20000000 12.14 Ncd 06mr24 Fvrs10	6,97,790	Excel
19/02/2019	Ess Kay Fincorp Limited 11.1610 Ncd 05mr24 Pprs50	6,00,000	Excel

Date	Name of the security	No. of Securities lying as at end of the day	Name of the strategy
01/02/2019	Reliance Capital Limited Series B/447 Br Ncd 11jl22 Fvrs1lac	208	Excel
28/02/2019	Reliance Capital Limited Series B/447 Br Ncd 11jl22 Fvrs1lac	304	Excel
01/01/2019	Bindu Recepies Private Limited Series S 12 Ncd 31dc24 Fvrs1	1,83,640	Demeter
06/02/2019	Visage Holdings And Finance Private Limited Sr 1-1000000 14.10 Ncd 31jn25 Fvrs10	1,00,00,000	Demeter

58. Therefore, I note that there were 50 instances where Noticee 1 had kept open position for a day. Further, from the transaction statement of the pool securities account of Noticee 1, I note that on many instances, Noticee 1 had kept open positions in respect of allocation of sales or purchases effected in a day.

59. As mentioned in Regulation 16(5) of PMS Regulations, 1993, the portfolio manager shall not keep any open position in respect of allocation of sales or purchases effected in a day. Thus, as per said regulation Noticee 1 cannot keep open position for the allocation of sales or purchases in a day. Noticee 1 in its reply to SCN has submitted that the stray instances of positions being kept open as occurred mainly due to pay-out of securities units received beyond the cut-off time from the Registrar/ Issuer or securities being transferred to pool account on record date in order to ensure credit of interest payment to pool account. Noticee 1 in its reply has provided an explanation for the instances mentioned in the SCN. Similarly, Noticee 2 in his reply has submitted that in all of the 50 instances captioned in the SCN, the positions remained open due to pay out of securities/units received beyond the cut-off time from the Registrar/Issuer or transfer of security into pool account on record date in order to ensure credit of interest into payment pool. On perusal of the explanation as provided by Noticee 1, I find that all the instances provided therein are not of receipts of securities/ units beyond cut-off time. Only in few instances, Noticee 1 had received the securities/ units in the evening but admittedly, securities / units were transferred on the next day only. Further, in some of the instances, it is clearly shown that securities were lying in its pool account of Noticee 1. For the rest of the cases, Noticee 1 has not provided any cogent explanation. I also note that Noticee 2 has not provided any explanation apart from what has been stated by Noticee 1. Therefore, I note that contention raised by Noticees 1 and 2 are devoid of merit. In view of the above, I find that allegation levelled against Noticees 1 and 2 that they have violated Regulation 16(5) of PMS Regulations,1993, stands established. In view of the findings at para 55 above, I find that allegation levelled against Noticees 3 to 6 that they had violated Regulation 16(5) of PMS Regulations, 1993 does not stand established.

60. It has been alleged in the SCN that there was reduction of invested corpus below Rs.25,00,000/- and thus, it has been alleged that Noticees have violated Regulation 15(1A) of PMS Regulations, 1993.

61. I note that in the Demeter portfolio strategy, there were reduction in principle amount invested due to direct interest/dividend pay-out from issuer to the client's bank account which resulted in reduction of invested corpus below Rs.25 lakh. I also note that there were 520 clients in the client master of Noticee 1 with a corpus of less than Rs. 25 lakh.

62. Noticee 1 in its reply has submitted that in respect of the instances cited in the SCN, the reduction was on account of redemptions/ maturity resulting in pay-outs made by the issuer directly to the clients. Noticee 1 has also claimed that the said circumstances were totally beyond their control. Noticee 1 has further contended that due to the action of third party, over which they had no control, the corpus reduced below Rs. 25 lakh. Similarly, Noticee 2 in his reply has contended that the reduction in the corpus of the clients of Noticee 1 vis-à-vis the minimum INR 25 lakh was a direct consequence of redemption/maturity resulting in pay-outs being made directly by the issuer to the clients of Noticee 1. I note from the Inspection Report that Noticee 1 offered Demeter strategy under the Discretionary Portfolio Management Services provided by it. I find it relevant to mention that in discretionary portfolio management service, the portfolio manager individually and independently manages the funds and securities of each client in accordance with the objectives of the client. Since the investments under discretionary PMS was managed by Noticee1, it was the responsibility of Noticee 1 to ensure that the value of assets under management of the concerned clients does not fall below the required minimum as per the aforesaid provision of PMS Regulations 1993. Its claim that it had no control over the action of third parties which was responsible for the reduction of the investment amount is, therefore, devoid of merit. Accordingly, I also do not agree with the contention raised by Noticee 2. In view of the above observations, I find that allegation levelled against Noticees 1 and 2 that they have violated Regulation 15(1A) of PMS Regulations, 1993 stands established. In view of the findings at para 55 above, I find that allegation levelled against Noticees 3 to 6 that they had violated Regulation 15(1A) of PMS Regulations, 1993 does not stand established.

63. It has been alleged in the SCN that Noticees made a provision for termination of client agreement without specifying any time limit at its end, whereas clients can terminate the agreement only after giving not less than 30 days' prior written notice of termination, which allegedly was a biased provision and thus, Noticee 1 violated Regulation 14(1)(b) of PMS Regulations, 1993.

64. I have perused the contents of the Model Portfolio Management Agreement (Agreement) of Noticee 1. Clauses 13. 5 and 13. 6 of the aforesaid agreement state as under:

13.5 The portfolio manager may at any time terminate this agreement by written notice of termination to the Client.

13.6 In addition to being entitled to terminate this Agreement under Clause 4, the Client may at any time terminate this Agreement by giving not less than 30 days prior written notice of termination to the Portfolio Manager.

65. From the above, I note that there is no uniformity in the condition of notice period regarding the termination of agreement, i.e. while the Agreement allows Noticee 1 to terminate the agreement at any time by written notice of the same to the client, the client can only terminate the agreement after giving 30 days' written notice to Noticee 1. Therefore, it shows that Noticee 1 has prepared an agreement which is biased in its favour as regards the termination clause, which is not in its client's interest.

66. Noticee 1 in its reply has submitted that there was an inadvertent error in the drafting of the Termination Clause in Agreement. Noticee 1 has further submitted that on becoming aware of the same during the course of inspection, corrective steps had been taken to rectify the same. Noticee 1 has further submitted that they had not terminated/ suspended any client's account immediately without giving sufficient prior notice except in extra-ordinary circumstances. Similarly, Noticee 2 in his reply has contended that he was not in charge of the documentation, and the inadvertent error in the drafting brought to the notice of Noticee 2 at the time of inspection by which time he had already resigned. Noticee 2 has further stated that the captioned PMS Agreement was drafted prior to the joining of him. Furthermore, the irregularity vis-à-vis the termination clause as mentioned in para 13 of the SCN has been rectified since being brought to the notice of the Company. Pertinently it is no one's case that a client account has ever been suspended without sufficient prior notice by the Company.

67. From the aforesaid, I find that Noticees 1 and 2 have admitted to the default regarding the termination clause of Agreement. However, Noticees 1 and 2 have also stated that the same was rectified during the course of inspection. Noticee 1 has provided rectified copy of the Agreement. Thus, in my view this is an admission by Noticees 1 and 2 of the default committed by them in respect of the Agreement. In view of the above observations, I find that allegation levelled against Noticees 1 and 2 that they have violated Regulation 14(1)(b) of PMS Regulations, 1993 stands established. In view of the findings at para 55 above, I find

that allegation levelled against Noticees 3 to 6 that they had violated Regulation 14(1b) of PMS Regulations, 1993 does not stand established.

68. It is alleged that by making provisions with regard to the outsourcing of core activities in the Agreement, Noticees have failed to observe high standards of integrity and fairness in his dealings with his clients and thus violated the provisions of the Regulation 13 of PMS Regulations, 1993 read with Clause 1 of Code of Conduct as specified in Schedule-III of PMS Regulations,1993 and clauses 1 and 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011.

69. Clause 2.18 of the Agreement reads as under: -
"For the purpose of discharging any of the duties, obligations and functions (whether under this agreement or under above mentioned Letter of Authority), of the Portfolio Manager, the client hereby empowers the Portfolio Manager to act through any of its officers, employees or representatives or other person specifically authorised by the Portfolio Manager and the Portfolio Manager is empowered to delegate the performance of its duties, discretions, obligations, any of powers and authorities here under to such sub-delegates and pay fees/consultancy charges that may be charged to the client's account."

70. I note that Clause 1 of Code of Conduct as specified in Schedule III of PMS Regulations, 1993 reads as under:

"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"

71. Further, clause 1 of SEBI circular no. 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 and clause 5 of the said circular specifies that a portfolio manager who is desirous of outsourcing its activities shall not outsource its core activities. 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 PMS Regulations, 1993.

72. The aforesaid circulars read with PMS Regulations,1993 do not allow PMS to outsource any of its core activities. I am of the view that while inserting the aforesaid clause in the Agreement, Noticee 1 has given itself an option to delegate its duties/obligations and functions by paying consultancy charges which would be subsequently charged to the clients

account. I find that the duties, obligations and functions of Portfolio Manager, *inter-alia*, are the core activities of PMS.

73. However, I note that clause 2.18 in the said Agreement allows Noticee 1 “to delegate the performance of its duties, discretions, obligations, any of powers and authorities here under” which indicates outsourcing of its core activities. Keeping such provision in the Agreement which allows Noticee 1 to outsource its core activities, demonstrates lack of integrity and fairness on part of Noticee 1.

74. Noticee 1 in its reply has contended that it had not outsourced its core activities and also has not charged any fees to the clients on account of delegation of any alleged core activity to the clients. Similarly, Noticee 2 in his reply has stated that the intent behind the alleged Clause 2.18 in the Agreement was to delegate only the routine and incidental operational activities pertaining to investment decisions (viz. interacting with other intermediaries such as Brokers, AMC’s etc. on client’s behalf to facilitate the transactions in the portfolio, to provide for appointment of custodian, to seek best fund accounting services etc. as and when required) so as to maintain speed and efficiency in operations. Noticee 2 has stated that neither Noticee 1 or himself dilute or avoid their responsibilities towards their clients. Furthermore, there has never been any investor complaint in relation to the same.

75. In this regard, I note that it is not SEBI’s case that Noticee 1 has outsourced its core activities or that it had charged any fees for the same. As seen from the aforesaid Clause in the Agreement, it contains a provision for outsourcing of its core activities which is in contravention of the clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011.

76. Noticee 1 in his reply has also contended that it was inspecting officials’ own observation that none of the core activities of the portfolio manager were outsourced, which also amply reinforces and fortifies their aforesaid contentions. In this regard, I note that Noticee 1 has not provided any documents to support its contention. Therefore, I do not agree with the contention raised by Noticees 1.

77. Noticees 1 and 2 have further contended that there was no provision with regard to outsourcing of core activities and Clause 2.18 in the agreement was only an enabling clause for delegating the routine activities and not for the outsourcing of core activities. I note that the aforesaid clause in the Agreement permits Noticee 1 to outsource its duties/ obligations and functions which are nothing but core activities of Noticee 1 and thereby exempts them from the responsibility of rendering high standards of service, exercising due diligence,

ensuring proper care, and exercising independent professional judgement. Therefore, I find that this contention of Noticees 1 and 2 is not acceptable.

78. Noticee 1 in its reply has submitted that they have now suitably modified the said clause to address all the concerns on this score.

79. On the basis of the aforesaid observations, it can be concluded that by inserting the aforesaid clause in the Agreement, Noticee 1 has empowered itself to relinquish its very obligations and duties to a third party for which it is being paid portfolio services fees by clients. Further, such a provision in the Agreement is also a violation of the aforesaid SEBI Circulars read with Regulation 13 of PMS, 1993 read with Clause 1 of Code of Conduct and clauses 1 and 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011. I am of the view that such action on part of Noticee 1 demonstrate the lack of high standards of integrity and fairness in the conduct of Noticee 1 as Portfolio Manager.

80. In view of the foregoing, I find that allegation levelled against Noticees 1 and 2 that they have violated Regulation 13 of PMS Regulations, 1993 read with Clause 1 of Code of Conduct as specified in schedule-III of PMS Regulations, 1993 and clauses 1 and 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011 stands established. In view of the findings at para 55 above, I find that allegation levelled against Noticees 3 to 6 that they had violated Regulation 13 of PMS Regulations, 1993 read with Clause 1 of Code of Conduct as specified in Schedule-III of PMS Regulations, 1993 and Clauses 1 and 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011 does not stand established.

81. It has been alleged in the SCN that Noticees have not obtained registration with CKYCR and has not uploaded the KYC data of clients with CKYCR, and thus has violated Clause 6 of SEBI Circulars No. CIR/MIRSD/66/2016 dated July 21, 2016 and Clauses 1 and 2 of SEBI Circular No. MIRSD/Cir- 120 /2016 dated November 10, 2016.

82. In this regard, Noticee 1 in its reply has contended that they were using the group resources to ensure compliance with CKYCR norms. Noticee 1 has also submitted that they had obtained separate CKYC registration in their name, as the operations of group entities were disrupted post 2019. From the reply submitted by Noticee 1, I note that Noticee 1 had not initially complied with CKYCR requirements and had not uploaded KYC data of clients with CKYCR. Since Noticee 1 itself has admitted that they had not obtained the registration from CKYC before 2019 i.e. during the inspection period.

83. Noticee 1 in its reply has further submitted that they had always complied with CKYC norms as the data required were uploaded by its DP. Noticee 1 in its reply has further contended

that CKYC forms are a part of the PMS account opening process and for every PMS client there was a separate demat account opened in the name of the respective client and the Depository team upload CKYC information. Similarly, Noticee 2 in his reply has submitted that CKYC was complied with at all times via the Company's depository participant (i.e. Karvy Stock Broking Limited). All norms and all data required was complied with by our depository participant domiciled at Hyderabad during the account opening process in relation to PMS.

84. At this juncture, I find it pertinent to state that since by its own admission, Noticees 1 and 2 had not obtained the CKYC registration during the inspection period, the questions of compliance with CKYC norms in terms of uploading of KYC data does not arise. Therefore, the aforesaid contention of Noticees 1 and 2 is devoid of merit.

85. In view of Noticees 1 and 2 own admissions, I find that allegation levelled against Noticees 1 and 2 that they had violated Clause 6 of SEBI Circular No. CIR/ MIRSD/66/2016 dated July 21, 2016 and Clauses 1 and 2 of SEBI Circular No. MIRSD/Cir-120/2016 dated November 10, 2016 stands established. In view of the findings at para 55 above, I find that allegation levelled against Noticees 3 to 6 that they had violated Clause 6 of SEBI Circular No. CIR/ MIRSD/66/2016 dated July 21, 2016 and Clauses 1 and 2 of SEBI Circular No. MIRSD/Cir-120/2016 dated November 10, 2016 does not stand established.

86. It has been alleged in the SCN that Annexure-B of the Disclosure Document which contains information about "*Penalties, pending litigation or proceedings, findings of inspection or investigations for* which *action may have been taken or initiated by any regulatory authority against group companies/ associates of PMS-KCL*" was not available on the website of Noticee 1, i.e. www.karvycapital.com and thus it has been alleged that Noticees have violated Regulation 14(2)(a) read with Clause 4 of Schedule V of PMS Regulations, 1993.

87. In this regard, Noticees 1 and 2 in their reply had mentioned that the disclosure documents consist of details of the action taken against them and/ or their associates by any regulatory authority and important proceedings pending before the courts. Noticees 1 and 2 had further stated that as a practice, hard copies of such disclosure documents are provided to prospective clients in booklet form 48 hours before the clients open an account with them and the clients have acknowledged receipt of the said disclosure documents. Further, it has been contended by Noticees 1 and 2 that they had not received any complaints from clients on this respect. Noticees 1 and 2 in their submission have however admitted that the disclosure document was provided to prospective clients and the same was also uploaded on the website, however, inadvertently, at the relevant time, disclosure on the website was missed. Noticee 1 has further stated that on becoming aware of the said lapse during the course of

inspection in 2019, they had immediately uploaded the requisite disclosures on the new website www.karvypms.com. Thus, Noticee 1 has stated that the alleged non-disclosure on the website was a technical lapse.

88. I note that Noticees 1 and 2 in their reply admitted that they had failed to disclose details of penalties/pending litigation or proceedings on its website inadvertently. In view of the admission made by Noticee 1, I find that the allegation levelled against Noticees 1 and 2 that they have violated Regulation 14(2)(a) read with Clause 4 of Schedule V of PMS Regulations, 1993 stands established. In view of the findings at para 55 above, I find that allegation levelled against Noticees 3 to 6 that they had violated Regulation 14(2)(a) read with Clause 4 of Schedule V of PMS Regulations, 1993 does not stand established.

Issue No. 18 II: Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?

89. It has been established in the foregoing paragraphs that Noticees 1 and 2 have violated the following provisions: -

    i. Regulation 16(5) of PMS Regulations, 1993;
    ii. Regulation 15(1A) of PMS Regulations, 1993;
    iii. Regulation 14(1)(b) of PMS Regulations, 1993;
    iv. Regulation 13 of PMS Regulations, 1993 read with Clause I of Code of Conduct as specified in Schedule III of PMS Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011;
    v. Clause 6 of SEBI Circulars No. CIR/MIRSD/66/2016 dated July 21, 2016 and Clauses 1 and 2 of SEBI Circular No. MIRSD/Cir- 120 /2016 dated November 10, 2016; and
    vi. Regulation 14(2)(a) read with Clause III- 4 of Schedule V of PMS Regulations, 1993

90. Noticee 1, in its submissions has submitted that every little deficiency or technical violation noticed during the course of the inspection is not culpable and does not call for penalty. To support its contention, Noticee 1 has quoted the judgement of Hon'ble Securities Appellate Tribunal ("**SAT"**) in the matters of UPSE Securities Ltd. v/s SEBI (Appeal No. 109 of 2011), DSE Financial Services Ltd. v/s SEBI (Appeal No.153 of 2012), Reliance Industries Limited v/s. SEBI (SAT appeal no, 39/2002) and Hon'ble Supreme Court in the Hindustan Steel Case (1970)1 SCR 753; Air 1970 SC 2563) for non-imposition of penalty. However, I note that the facts of the above cases are different from the facts of the present proceedings and therefore, not relevant.

91. Noticee 2 in his reply has also stated that power to impose penalty includes power to impose no penalty in the given facts and circumstances. In this regard, Noticee 2 has placed reliance on the judgement of Hon'ble Supreme Court in the matter of SEBI vs. Bhavesh Pabari (2019 SCC Online SC294). Further, Noticee 2 has also placed reliance on the judgement of Hon'ble SAT in Piramal Enterprises Ltd. vs. SEBI (2019 SCC Online SAT 134), P.G. Electroplast and others vs. SEBI (2019 SCC Online SAT 148) and requested to dispose of the proceeding

92. 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 held that: *"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.''*

93. Therefore, in view of the violations as established and placing reliance on the aforesaid judgment, I find that monetary penalty would be attracted under Section 15 HB of SEBI Act for the violations of Regulation 16(5) of PMS Regulations, 1993, Regulation 15(1A) of PMS Regulations, 1993, Regulation 14(1)(b) of PMS Regulations, 1993, Regulation 13 of PMS Regulations, 1993 read with Clause I of Code of Conduct as specified in Schedule III of PMS Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011, Clause 6 of SEBI Circulars No. CIR/MIRSD/66/2016 dated July 21, 2016 and Clauses 1 and 2 of SEBI Circular No. MIRSD/Cir- 120 /2016 dated November 10, 2016 and Regulation 14(2)(a) read with Clause III- 4 of Schedule V of PMS Regulations, 1993 by Noticees 1 and 2.

94. The text of Section 15HB of SEBI Act is reproduced as under:

Section 15HB of SEBI Act: - *Penalty for contravention where no separate penalty has been provided:*

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

<u>Issue No. 18 III: If the answer to issue no. 18- II is in affirmative, then what should be the quantum of monetary penalty?</u>

95. While determining the quantum of penalty under Section 15HB of the SEBI Act, factors stipulated in Section 15J of the SEBI Act have to be given due regard. The aforesaid provisions are reproduced hereunder:

Factors to be taken into account by the adjudicating officer under SEBI Act

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

Explanation. — For the removal of doubts, it is clarified that the power of an adjudicating officer *to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section*

96. Noticee 2 in his reply has mentioned that the scope of the inspection was to verify whether Noticee 1 has complied with the Regulations and circulars in respect of Investor Service/ Complaints, KYC Compliances, On-Boarding of clients, Fees/ charges, Conditions of grant of registration, Anti-money Laundering guidelines and SEBI has not found any non-compliance with respect to the more serious charges of investor complaints, conditions of grant of registration or Anti-Money Laundering guidelines which would not only affect its clients but investors at large. Noticee 2 in his reply has further stated that, Noticee 1 had not completed one year since it procured PMS License and every minor deviations/ technical lapses should not be escalated. Further, it has been submitted by Noticee 2 that the violations mentioned in the SCN are neither repetitive nor he had made any gain or avoided any loss in course of the same.

97. I note that in the present matter, no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticees 1 and 2. Further, from the material available on record, it is not possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticees 1 and 2. As regards the repetitive nature of the default, I do not find that the Inspection having brought on record

any regulatory action taken by SEBI in the past against Noticees 1 and 2 for same violations as those observed in the instant matter. However, from perusal of SEBI website as well as reply submitted by Noticee 2, I note that, vide order dated August 30, 2022, SEBI had imposed a penalty of Rs. 7,00,000/-(jointly and severally) on Noticee 2 with Landmark Capital Advisors Pvt. Ltd. and Ashish Kumar Joshi in the matter of Landmark Capital Advisors Pvt. Ltd. under Section 15HB of SEBI Act.

98. Noticee 2 in his reply has further mentioned that Ld. AO should consider the order passed by the another Ld. AO of SEBI. Noticee 2 in his reply has placed reliance on the judgement of Hon'ble SAT in the matter of R.M. Shares Trading Pvt. Ltd. (SAT Appeal No. 204 of 2014, decided on August 07, 2014). Further, Noticee 2 in his reply has also placed reliance on the order passed by Ld. AO in the matter of Karvy Stock Broking Ltd. and Landmark Capital Advisors Ltd. wherein penalty of Rs. 8 lakh and Rs. 7 lakh (jointly and severally), respectively imposed on the directors of the company for violations similar to those alleged in the present SCN. I have perused the orders/judgements referred by Noticee 2 and the same has been considered by me.

99. I have also considered the aforesaid submissions made by Noticee 2. I note that Noticee 1 has not completed one year since it procured PMS License. I have also noted the corrective steps taken by Noticee 1 for rectifying the deficiency at the time of inspection and subsequent to receipt of the findings of the inspection and the same can be considered as mitigating factor.

ORDER

100. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 15J of SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalty jointly and severally under Section 15 HB of SEBI Act on Noticees 1 and 2 viz. M/s. Karvy Capital Limited and Mr. Kedar Deshpande:

Sr. No.	Name of Noticee	Penalty
1	Karvy Capital Limited	**Rs. 6,00,000(Rupees Six Lakh only)**
2	Mr. Kedar Deshpande	

101. I am of the view that the said penalty is commensurate with the violations committed by Noticees 1 and 2.

102. Noticees 1 and 2 shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in

103. In the event of failure to pay the said amount of penalty by Noticees 1 and 2 within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticees 1 and 2 under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees1 and 2.

104. In terms of the provisions of Rule 6 Adjudication Rules, copy of this order is being sent to Noticees and also to SEBI.

Date: March 28, 2023	**SOMA MAJUMDER**
Place: Mumbai	**Adjudicating Officer**