

SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER-CUM-SHOW CAUSE NOTICE

Under Sections 11(1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 35 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of –

S. No.	Name of the Noticee	Registration No.	PAN No.
1.	DGS Capital Management Private Limited	INP000004870	AAFCD3473N

Background

1. DGS Capital Management Private Limited (hereinafter referred to as the **“Noticee”**/ **“DGS”**), is registered with Securities and Exchange Board of India (hereinafter referred to as **“SEBI”**) as a ‘Portfolio Manager’ in terms of Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020 (hereinafter referred to as **“Portfolio Managers Regulations”**) bearing registration No. INP000004870. An examination of the Noticee was carried out by SEBI for the period from January 1, 2023 to December 31, 2024 (hereinafter referred to as **“Examination Period”**) based on its offsite inspection data. Subsequently, vide email dated August 21, 2024, various details with respect to its net worth and Principal Officer were sought from the Noticee. Pursuant to the examination, various non-compliances including failure to maintain the minimum net worth as required, under the Portfolio Managers Regulations were observed against the Noticee.

2. Before discussing the findings of the examination, it would be relevant to mention the applicable regulatory provisions:

SEBI (Portfolio Managers) Regulations, 2020

Regulation 7- Consideration of application

(1) *For considering the grant of certificate of registration to the applicant, the Board shall take into account all matters which it deems relevant to the activities relating to portfolio management.*

(2) *Without prejudice to the generality of the foregoing provisions, the Board shall consider whether: -*

....

(d) the principal officer of the applicant has—

...

(iii) the relevant NISM certification as specified by the Board from time to time.

...

Provided further that a fresh NISM certification shall be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with the certification requirements

...

(g) the applicant fulfills the net worth requirement specified in regulation 9

Regulation 9- Net worth Requirement

(9) *The net worth referred to in clause (g) of regulation 7 shall not be less than five crore rupees:*

Provided that a portfolio manager, who was granted a certificate of registration prior to the commencement of the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, shall raise its net worth to not less than five crore rupees within thirty-six months from such commencement:

Provided further that the portfolio manager shall fulfill the net worth requirements under these regulations, separately and independently, of the capital adequacy requirements, if any, for each activity undertaken by it under the relevant regulations:

....

Regulation 11- Conditions of registration

...

(e) the portfolio manager shall maintain the networth specified in regulation 9 at all times during the period of the certificate.

SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007

Obligation to obtain certificate

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

Provided that an associated person employed or engaged by an intermediary prior to the date specified by the Board may continue to be employed or engaged by the intermediary if he obtains the certificate within two years from the said date.

Powers and functions of NISM

7 (2) Without prejudice to the generality of the foregoing provisions and the activities of NISM under its articles, the functions of NISM in respect of certification for associated persons in the securities market shall include putting in place and implementing the certification process, procedure and policies.

Notification under SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007- NISM-Series-XXI-B: Portfolio Managers Certification Examination

1. The associated persons functioning as principal officer of a Portfolio Manager or employee(s) of the Portfolio Manager having decision making authority related to fund management, shall obtain certification from the National Institute of Securities Markets by passing the NISM-Series-XXI-B: Portfolio Managers Certification Examination as mentioned in the communiqué No. NISM/Certification/Series-XXI-B: Portfolio Managers (PM) Certification/2021/01 dated June 15, 2021 issued by the National Institute of Securities Markets.

2. The Portfolio Managers shall ensure that all such associated persons who are principal officers or employees having decision making authority related to fund management as on the date of this notification obtain the certification by passing

the NISM-Series-XXI-B: Portfolio Managers Certification Examination within two years from the date of this notification:

Provided that a Portfolio Manager, who engages or employs any such associated person who is a principal officer or an employee having decision making authority related to fund management, after the date of this notification, shall ensure that such person obtains certification by passing the NISM-Series-XXI-B: Portfolio Managers Certification Examination within one year from the date of their employment.

Master Circular for Portfolio Managers-SEBI/HO/IMD/IMD-POD-1/P/CIR/2024/80 dated June 07, 2024

Clause 1.7 Certificate of associated persons in the Securities Markets

1.7.1. For employees of Portfolio Managers

1.7.1.1. *The associated persons functioning as principal officer of a Portfolio Manager or employee(s) of the Portfolio Manager having decision making authority related to fund management, shall obtain certification from the National Institute of Securities Markets by passing the NISM Series-XXI-B: Portfolio Managers Certification Examination as mentioned in the communiqué No. NISM/ Certification/Series-XXI-B: Portfolio Managers (PM) Certification/2021/01 dated June 15, 2021 issued by the National Institute of Securities Markets.*

1.7.1.2. *The Portfolio Managers shall ensure that all such associated persons who are principal officers or employees having decision making authority related to fund management as on the date of this notification obtain the certification by passing the NISM-Series-XXI-B: Portfolio Managers Certification Examination within two years from the date of the notification:*

Provided that a Portfolio Manager, who engages or employs any such associated person who is a principal officer or an employee having decision making authority related to fund management, after the date of the Gazette Notification No. SEBI/LAD-NRO/GN/2021/49, shall ensure that such person obtains certification by passing the NISM- Series-XXI-B: Portfolio Managers Certification Examination within one year from the date of their employment.

5.2 Submission of compliance reports by Portfolio Manager

5.2.1. *With effect from Financial Year 2019-20, Portfolio Managers are required to submit the following information to SEBI:*

5.2.1.1. A certificate from the qualified Chartered Accountant certifying the networth as on March 31, every year based on audited account within 6 months from the end of Financial Year.

5.2.1.2. A certificate of compliance with PM Regulations and circulars issued thereunder, duly signed by the Principal Officer, within 60 days of end of each financial year. Further, details of non-compliance along with the corrective actions, if any, duly approved by Board of the Portfolio Manager.

5.2.2. Submission of Corporate Governance Report:

5.2.2.4. Portfolio Managers shall report to SEBI on compliance with the provisions of the above guidelines while submitting the annual reports. The report should reach SEBI within thirty days from the end of the financial year.

5.2.3. Failure to submit reports as mentioned in this master circular shall constitute a default and render the Portfolio Managers liable for action under the Intermediaries Regulations.

FINDINGS:

Non-maintenance of minimum net worth

3. The extant Portfolio Managers Regulations, 2020 came into force w.e.f. January 16, 2020. Regulation 9 of these Regulations stipulates that any applicant seeking registration as a portfolio Manager is required to meet the net worth which shall not be less than ₹ 5 Crores. However, in terms of proviso to Regulation 9, a portfolio manager, who was granted a certificate of registration prior to the commencement of the said Regulations, was required to raise its net worth to not less than ₹ 5 Crores within thirty-six months from such commencement. Further, in terms of Regulation 11(e) of the Portfolio Managers Regulations, any certificate of registration granted under regulation 10 is, *inter alia*, subject to the portfolio manager maintaining the net worth specified in regulation 9 at all times during the period of the certificate. Thus, the obligation to maintain the net worth requirement is on a continuous basis.
4. The Noticee was granted registration as a Portfolio Manager by SEBI on October 05, 2015 i.e. prior to January 16, 2020. Therefore, it was required to raise its net worth to not less than ₹ 5 Crores latest by January 15, 2023. It is observed that the

Noticee has not filed its net worth certificate certified by any qualified Chartered Accountant for the Financial Year 2022-23 and 2023-24 with SEBI. Therefore, its net worth as on March 31, 2023 and March 31, 2024 as per its filings with Ministry of Corporate Affairs (MCA) has been noted to be only ₹ 1.64 Crores and ₹1.6 Crores respectively.

5. Further, SEBI vide email dated September 23, 2024 sought audited net worth certificate as on Dec 2023 and audited/unaudited net worth certificate for March 2024. In response, the Noticee vide its email dated September 24, 2024 provided its financial statements (Balance sheet and Profit and Loss statement) for the year ending March 31, 2023 and provisional financials for the year ending March 31, 2024. Based on the submissions provided by the Noticees, its net worth was noted to be only ₹ 1.64 Crores as on March 31, 2023 and ₹ 1.6 Crores as on March 31, 2024.
6. SEBI vide email dated February 03, 2025, advised the Noticee to provide its latest available financials to which the Noticee has not responded till date. Thus, the Noticee has continuously failed to maintain the minimum net worth from January 15, 2023 in non-compliance with the regulatory requirements.

Non-submission of Various Reports:

7. In terms of clause 5.2 of the Master Circular for Portfolio Managers dated June 07, 2024, every Portfolio Manager is required to submit: (1) A certificate from the qualified Chartered Accountant certifying the net worth as on March 31 every year (2) A certificate of compliance with Portfolio Managers Regulations and circulars issued thereunder, duly signed by the Principal Officer, within 60 days of end of each financial year. Further, every portfolio manager is required to submit Corporate Governance Report in terms of clause 5.2.2.4 of the said Master Circular dated June 07, 2024.

8. It is noted that the Noticee has not submitted any of these three reports (Network Certification, Corporate Governance report and report on compliance with Portfolio Managers Regulations) in violation with the express provisions of the Master Circular dated June 07, 2024 as amended from time to time during the period of examination.

Non-compliance with NISM Certification Requirements

9. In terms of Portfolio Managers Regulations, for considering the grant of certificate of registration to the applicant, in terms of Regulation 7, SEBI is *inter alia* required to examine whether the Principal Officer of the applicant has the relevant NISM certification as specified by SEBI from time to time. Further, it provides that a fresh NISM certification shall be obtained by the applicant before expiry of the validity of the existing certification to ensure continuity in compliance with the certification requirements. In terms of Clause 1.7 of the Master Circular dated June 07, 2024, the associated persons functioning as Principal Officer of a Portfolio Manager or employee(s) of the Portfolio Manager having decision making authority related to fund management, shall obtain certification from NISM by passing the NISM Series-XXI-B: Portfolio Managers Certification Examination as mentioned in the communiqué No. NISM/ Certification/Series-XXI-B: Portfolio Managers Certification/2021/01 dated June 15, 2021 issued by NISM. Furthermore, the Portfolio Managers shall ensure that all such associated persons who are Principal Officers or employees having decision making authority related to fund management as on the date of this notification¹ obtain the certification by passing the NISM-Series-XXI-B: Portfolio Managers Certification Examination within two years from the date of the notification(September 07, 2021). Thus, the Noticee was required to ensure that its Principal Officer obtained the necessary NISM certification by September 07, 2023.

¹ Notification No. SEBI/LAD-NRO/GN/2021/49 dated September 07, 2021 under Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

10. In this regard, it is noted that the Noticee's Principal Officer i.e. Mr. Ashish Sharma bearing PAN No. FSIPS3049N who was appointed as PO in year 2015, passed the required NISM certification only on October 14, 2024. Thus, the Noticee was in violation of the regulatory provisions with respect to NISM certification from September 07, 2023 till October 13, 2024.

Need for interim directions:

11. As detailed in the above paragraphs, the Noticee acted as a registered Portfolio Manager without meeting the minimum capital adequacy requirement (net worth of ₹5 Crores) as mandated under the Portfolio Managers Regulations. It is noteworthy that despite lapse of more than two years since the end of timeline for meeting the regulatory requirement of net worth (i.e., January 15, 2023), the Noticee has shown no progress towards compliance. This persistent failure indicates an unacceptable state of affairs. Continuing a pattern of non-compliance, the Noticee neglected to file mandatory periodic reports (Networth Certification, Corporate Governance report, and Portfolio Managers Regulations compliance report) with SEBI for both FY 2022-23 and FY 2023-24. Furthermore, the Noticee was in breach of the statutory requirement regarding the Principal Officer's NISM certification, a violation spanning from September 7, 2023, to October 13, 2024.

12. Every registered intermediary is required to comply with the statutory requirements laid down by SEBI. Non-compliance with the obligations under the Portfolio Managers Regulations and the SEBI Circulars, weakens the regulatory framework. Net worth requirements are critical for ensuring operational solvency and safeguarding client interests. These requirements ensure that the entity retains sufficient assets to meet operational liabilities, contingent obligations and potential financial disruptions. Such safeguards are essential to preserve market integrity, ensure continuity of service and upholding client's confidence in the entity's financial soundness.

13. In this regard, I find it pertinent to refer to the following observations made by Hon'ble High Court of Gujarat in the matter of *Nikhil T Parikh - sole Proprietor of Parikh & Parikh & Ors. vs Union of India & Ors.*²

“...Net worth requirement is meant for determining the financial health of the company/organization. It is required to ensure that only serious and sound players who can provide the required infrastructure for capital market can enter the market. The impact on the net worth could be very high in extreme scenarios...”

14. The preceding observations are particularly relevant to SEBI Registered Portfolio Managers, given the significance of net worth in safeguarding client interests, ensuring operational efficiency and preserving financial integrity.

15. In the instant case, the number of clients and Asset Under Management (AUM) of the Noticee during the examination period are as under:

Month end	No. of Clients	AUM (₹ Crore)
Jan-23	19	99.12
Feb-23	19	98.74
Mar-23	19	95.35
Apr-23	19	98.32
May-23	19	103.31
Jun-23	19	108.97
Jul-23	19	111.61
Aug-23	19	100.13
Sep-23	19	112.14
Oct-23	19	122.58
Nov-23	19	130.57
Dec-23	19	138.8
Jan-24	20	137.15
Feb-24	20	136.91
Mar-24	20	143.54
Apr-24	17	149.14
May-24	17	158.79
Jun-24	17	181.4
Jul-24	17	193.04
Aug-24	18	204.14

² Special Civil Application No. 17040 Of 2012 With Writ Petition (PIL) No. 211 Of 2012

Month end	No. of Clients	AUM (₹ Crore)
Sep-24	18	197.69
Oct-24	18	191.25
Nov-24	19	193.18
Dec-24	19	201.03

16. It is noted that Noticee's AUM expanded from ₹ 99.12 Crores from the beginning of examination period (January 2023) to ₹ 201.03 Crores at the end of examination period (December 2024) while remaining non-compliant with net worth requirements. Considering the above, immediate preventive action is required to be taken against the Noticee to avert potential risks to its clients by issuance of interim directions.

Directions

17. Accordingly, I, in exercise of the powers conferred upon me under Sections 11(1), 11 (4), 11B (1) read with Section 19 of Securities and Exchange Board of India Act, 1992 and Regulation 35 of the Intermediaries Regulations, 2008 hereby by way of the present interim order cum show cause notice, issue the following directions:

- a. The Noticee is directed to comply with the regulatory requirements with respect to maintenance of the minimum net worth within a period of 15 days from the date of this order;
- b. The Noticee is prohibited from on-boarding any new client and to accept additional funds or securities from its existing clients till it meets the applicable net worth requirement;
- c. If the Noticee fails to comply with the direction at (a) above, appropriate proceedings as deemed fit by SEBI including proceedings for cancellation or suspension of its registration may be initiated against it in terms of the provisions of Intermediaries Regulations, 2008.

18. This Order shall come into force with immediate effect. Further, the Noticee shall bring this Order to the notice of all its clients.

19. The observations/findings contained in this order are made on the basis of the material available on record. The order shall also be treated by the Noticee as a Show Cause Notice under Sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) of the SEBI Act 1992, read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, calling upon it to show cause as to why directions including the following shall not be issued against it:

- a. Direction to transfer its activities to another registered portfolio manager to carry on such activity or allow its clients or investors to withdraw or transfer their securities or funds held in its custody or to withdraw any assignment given to it, without any additional cost to such client or investor;
- b. Direction not to access the securities market or deal in securities or associate with any intermediary or with any capital market related activity for an appropriate period;
- c. Directions for imposition of penalty under Section 11B(2) and 11(4A) read with Section 15A(b) and 15HB of the SEBI Act, 1992.

20. The Noticee may file its reply to the present interim order cum show cause notice within 21 days from the date of receipt of this order and avail an opportunity of personal hearing in the matter, if it so desires.

21. This order is without prejudice to any other action that SEBI may initiate under the securities laws, as deemed appropriate, against the Noticee.

Sd/-

DATE: FEBRUARY 17, 2025

PLACE: MUMBAI

AMARJEET SINGH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA