

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Sr. No.	Name of Noticee	SEBI Registration No.
1	Inventure Growth and Securities Ltd.	INZ000221934

In the matter of Inventure Growth and Securities Ltd.

Background

1. The present matter emanates from show cause notice dated January 27, 2021 (hereinafter referred to as “SCN”) issued to Inventure Growth and Securities Ltd. (hereinafter referred to as “IGSL / Noticee”) under regulation 27(1) of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”). IGSL is registered with SEBI as Stock broker and its registration details are as follows:

Table No. 1

Noticee Name	Exchange	Segment	Registration No.
Inventure Growth and Securities Ltd. - Stock broker	NSE	Currency derivative	INE230901739
		Equity derivative	INF230901739
		Equity	INB230901739
	BSE	Equity derivative	INF010901730
		Equity	INB010901730
		Currency derivative	INE010901730
	MSE	Equity derivative	INF260901732
		Equity	INB260901732
		Currency derivative	INE260901739

2. Vide the above mentioned SCN, IGSL was called upon to show cause as to why action as recommended by the Designated Authority (hereinafter referred to as “DA”) or any other direction as deemed fit should not be issued/imposed on it in terms of regulation 27 of the Intermediaries Regulations. The said SCN was also enclosed with a copy of the report of the DA dated October 28, 2020 made with respect to IGSL.
3. The DA in his report had observed that IGSL was involved in fund based activities with its subsidiaries. The said act of IGSL has led to the violation of the provisions of Rule 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as “SCRR”) during the period April 2017 to May 2018 (hereinafter referred to as the “**inspection period**”). However, wherever it was felt necessary, references have also been made to the periods outside the aforesaid inspection period.
4. The DA in his report made the following recommendation:

“...it is hereby recommended that, the Noticee may be issued with warning and advised to ensure in future strict compliance with the requirement of sections 8(1)f and 8(3)f of SCRR failing which such delinquency will be viewed seriously and consequently, the Noticee will be liable for stringent regulatory action including cancellation or suspension of its registrations, as deem fit.”
5. As stated above that on the basis of the Enquiry Report a SCN was served on IGSL. In response to the SCN, IGSL vide its letter dated May 31, 2021 while denying the allegation levelled in the SCN, has *inter alia* submitted as follows:
 - 5.1. It is submitted that the loans were provided by the *Noticee* to its wholly owned subsidiaries at a fair interest rate of 18% per annum (which was higher than the rate of interest charged by the Bank to the *Noticee*). Such temporary loans cannot be treated as a fund based business activity of the *Noticee*. The *Noticee* is not in the business of money lending. The *Noticee* is purely into the business relating to securities market. It may be noticed from the P&L account of the *Noticee* that during the year 2016-17, the *Noticee* had earned revenue amounting to INR 19,98,10,612 from its operating activities viz. activities of securities market or

related to securities market and out of it only INR 4,04,218 was received as interest on the said temporary loans advanced to its subsidiaries.

5.2. The details of loans advanced to its subsidiaries as on March 31, 2018, are as under:

Table No. 2

Name of Group Company	Amount of Loan (INR)
Inventure Finance Private Limited	8,75,00,000
Inventure Wealth Management Limited	75,000
Inventure Merchant Banker Services Private Limited	50,000
Total	8,76,25,000

5.3. Further for the financial year 2017-18, the *Noticee* had earned INR 26,71,90,767 from its operating activities in securities market and only INR 1,04,35,575 was received as interest from said subsidiaries. This comprised of only 3.90% and is not a substantial portion of its business.

5.4. For any activity to be classified as business activity there should be several such activities with several clienteles. However, in the instant matter it is only the subsidiaries of the *Noticee* to whom loans were advanced from the *Noticee's* own surplus funds (over and above the prescribed minimum net worth requirement). No funds belonging to the clients were used to transfer money to its subsidiaries and therefore, it cannot be alleged that such funding has in any manner saddled personal liability on the *Noticee*.

5.5. There is also an allegation that the act of the *Noticee* in giving temporary loans to its subsidiaries, was an act of sub-lending, as the funds that were transferred by the *Noticee* were the funds received by availing overdraft facilities from the Bank and therefore, did not come from its own surplus funds. In this regard, it is contended by the *Noticee* that the payment was made from the OD account of the *Noticee* that was backed by FDs. OD against FD facility is used for optimization of working capital so that interest is earned throughout the tenure on the FDs, while payment of interest to Bank is based on consumption of OD facility and therefore,

is applicable only on consumption basis. Therefore, the payment from an OD account against FD is actually a payment from its own funds and not from borrowed funds.

- 5.6. It is submitted that the networth of the *Noticee* was far in excess of the loans advanced by the *Noticee* to its subsidiaries and in no manner could have adversely impacted the financial strength of the trading member. The amount of loans advanced as compared to the networth of the *Noticee* were as under:

Table No. 3

Year	Net worth of the Noticee	Amount of Overdraft Outstanding (INR in crore)	Loan given to Subsidiaries (INR in crore)
2016-17	151.23	5.98	7.40
2017-18	152.42	1.38	8.76
2018-19	146.84	3.11	NIL

- 5.7. It is further submitted that SEBI and the Exchanges have specified only a minimum networth of INR 1 crore to operate as a trading member and the same is not linked to any other parameter. Further there has never been an instance where the *Noticee* has not been able to fulfill its obligation towards Exchanges or has not been able to pay the dues to its clients. Till date, there has never been a complaint from a single client about non-receipt of funds / delayed receipt of funds for want of money against the *Noticee*.

- 5.8. SEBI vide its circular SMD/SED/CIR/93/22570 dated October 21, 1993 has prescribed capital adequacy norms applicable to all stock brokers w.e.f. December 1, 1993. SEBI has specifically provided in the explanation to the said circular that loans given to Associates are non-allowable assets for the purpose of computation of net-worth of member of the Stock Exchange. It is submitted that if the intent of SEBI is to treat the loans given to associates as a lending business, it would not have provided for an explanation which only requires excluding loans given to such associates from the calculation of net worth, instead of treating it as a disqualification for membership.

5.9. Even in the SEBI (Stock Broker) Regulations, 1992 the meaning of the word "net worth" provided in the Explanation to Schedule VI [read with Regulation 5(h) and 9(g)] is given as under:

*"Explanation. - For the purposes of this Schedule, 'networth' shall mean paid up capital, free reserves and other securities approved by the Board from time to time but shall not include fixed assets, pledged securities, value of member's card, non-allowable securities(unlisted securities), bad deliveries, doubtful debts and advances (debts or advances overdue for more than three months or debts or **advances given to the associate persons of the member**), prepaid expenses, losses, intangible assets and 30% value of marketable securities"*

5.10. From a reading of the above circulars and regulations it is clear that it is permissible for the brokers to give loans to their associates from their surplus and SEBI has time and again acknowledged the fact that the brokers may give loan/debt to associates. Only clarification given by SEBI is that such debts and advances due beyond a period would not be included while calculating the net worth of a stock broker.

5.11. In a matter of similar nature, the Adjudicating Officer, SEBI had passed an order dated 31st October, 2017 in the matter of *Geojit BNP Paribas Financial Services Ltd.*, wherein it was *inter alia* held that there is no restriction on the inter corporate loans given by an intermediary out of its surplus funds as a temporary financial accommodation.

6. After perusing the aforesaid submissions made by the *Noticee* and considering the facts and circumstances of the case as well as the request of the *Noticee*, an opportunity of personal hearing was granted to the *Noticee* on May 10, 2022. The said hearing notice was sent by an email dated April 19, 2022 to the *Noticee*. On the day of the scheduled hearing, the authorised representatives of the *Noticee* made submissions on behalf of the *Noticee* similar in line with the written reply already filed by the *Noticee*.

Consideration of Issues and Findings

7. I have carefully perused the post Enquiry SCN including the Enquiry Report served on the *Noticee* and other materials/information submitted by the *Noticee* and relevant material available on record. After considering the allegation levelled against the *Noticee* in the instant matter as spelt out in the post Enquiry SCN, the issue which arises for my consideration in the present proceeding is whether, the *Noticee* has engaged in a business other than that of business in securities markets, thereby involving personal financial liability by extending loans to its subsidiary companies.
8. Before proceeding further, it will be relevant here to reproduce the applicable provision of Rule 8(3)(f) of SCRR. The text of the said Rule is as follows:

“Qualifications for membership of a recognised stock exchange.

Rule 8. The rules relating to admission of members of a stock exchange seeking recognition shall inter-alia provide that: -

...

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

...

(f) he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that—

(i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items (a) to (n) of sub-rule (8)”

9. It has been admitted by IGSL that it had given loan at an interest rate of 18% to three of its subsidiaries. The cumulative figure of the loan amount was INR 8,76,25,000/-. As noted from IGSL's submission before the DA and reiterated before me, the said loan was given to the subsidiaries to help them meet their working capital requirement for their business activities. In this regard, I note that Rule 8(3)(f) of SCRR clearly prohibits members from engaging in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability. Further, a clarification to Rule 8(3)(f) of SCRR was provided by SEBI vide its circular SMD/POLICY/CIR-6/97 dated May 7, 1997 wherein it was opined that borrowing and lending of funds, by a trading member, in connection with or incidental to or consequential upon the securities business, would not be treated as a disqualification under Rule 8(3)(f) of SCRR.
10. Upon examining Rule 8(3)(f) of SCRR along with the relevant clarifications issued by SEBI, it is observed that for a business to be disqualified in terms of Rule 8(3)(f) of SCRR, the following three parameters have to be satisfied:
 - 10.1. The business in question should not be the primary / dominant activity of the intermediary i.e. it cannot be securities business.
 - 10.2. The business in question should not be in connection with or incidental to or consequential upon the securities business.
 - 10.3. The business in question should incur financial liability for the intermediary.
11. Applying the aforesaid parameters in the given factual situation, it is noted that the primary / dominant activity of IGSL is stock broking activity, whereas as per record, the impugned business transactions for which there is no dispute, is that of lending of funds by way of loan by IGSL to its three subsidiaries against which as per the *Noticee*, it had received/earned interest from its three subsidiaries. Thus, the nature of the business of extending loan facility at a specific rate of interest, *per se* shows that it is

not a securities business. Coming to the second parameter, it is observed that extending loan facility to subsidiaries so that they can meet the working capital requirement for their business, can by no stretch of imagination be said to be an activity/business/undertaking in connection with or incidental to or consequential upon the securities business of IGSL. I also note that there is no submission with supporting evidence to suggest that granting of loan by IGSL to its subsidiaries was in any manner connected directly or indirectly with IGSL's broking business but it was solely the financial requirement of the subsidiaries which was met by IGSL. Thus, in the absence of anything to the contrary, I am constrained to observed that the impugned business transactions were also not incidental to the securities business of IGSL and in support of the above, I would like to refer to the decision of the Hon'ble Supreme Court of India in the matter of *Royal Talkies, Hyderabad & Ors. vs. Employees State Insurance Corp* decided on August 9, 1978 wherein it was held as follows: "A thing is incidental to another if it merely appertains to something else as primary. Surely such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either." Applying the above principle in the extant matter, it is observed that the impugned business transactions of lending of funds by IGSL at a specific rate of interest and borrowing of funds by subsidiaries from it by paying interest at a specific rate to IGSL, partakes the characteristics of a banking transaction / money lending, which is extraneous / contrary to the business purpose of IGSL which is to facilitate trading activities of its clients on the Stock Exchange platform. Moreover, the loan facility that was extended by IGSL was not consequent to its securities business but the need for advancing those loans arose as a consequence to the subsidiaries falling short of their working capital requirement. To further illustrate, an activity which can be said to be in connection with or incidental to or consequential upon the securities business of IGSL, can be activities like extending of margin trading facility by IGSL to its clients in cash segment but not advancing a loan to another entity to help it financially. Consequently, even the second parameter as delineated at paragraph 10.2 above is also found to be not satisfied since the activity of lending and borrowing can't be held as a business in connection with or incidental to or consequential upon the securities business of the *Noticee*. Lastly, with regard to the third parameter as indicated at paragraph 10.3 above, it goes without saying that

any business transactions, specifically the one which involves lending and borrowing of funds, has a probability that it may result in a personal financial liability either for the lender or for the borrower. It is immaterial to consider under Rule 8(3)(f) of SCRR as to whether in this case any personal financial liability has not happened or will not happen. I note that the above factors/ingredients are for disqualification and the test would always rest on the preponderances of incurring the liability and not on whether any actual liability was incurred. I have noted above that the probability of incurring financial liability is very much inbuilt into and integrally attached with any activity of lending and borrowing of funds. Under the aforesaid Rule, it is not permissible for a trading member to engage in any business activity which involves the possibility of incurring personal financial liability, irrespective of the actual outcome of the said business activity. It is untenable to submit that loans were extended to its subsidiaries and it has earned interest better than the prevailing market rate and that it had not actually resulted in incurring financial liability. In the extant matter, in a situation where the subsidiaries would have defaulted in their obligation to repay the loans to IGSL, then IGSL would have no other option left but to write off the said defaulted amount in its books of accounts thereby, resulting in a financial liability for IGSL, which under Rule 8(3)(f) of SCRR is not permissible.

12. IGSL has contended that its activity of giving temporary loans to its subsidiaries cannot be treated as its business activity and for any activity to be classified as business activity, there should be several such activities with several clienteles. The submission of IGSL at first blush may look persuasive but it all depends on how does one construe the definition of "business". Here, it would be appropriate to refer to the order of the Hon'ble High Court of Punjab and Haryana in the matter of *The Model Town Welfare Council, Ludhiana vs. Bhupinder Pal Singh* decided on April 19, 1971 wherein the Hon'ble High Court was adjudicating upon the word "business" as appearing in Section 2(f) of East Punjab Urban Rent Restriction Act, 1949. In the aforesaid matter, it was held as follows:

"24. Wherever the word "business" is defined in a particular statute, it is to be given the meaning ascribed to it in that definition. The question whether the word "business" has been used in a narrower sense or in a larger sense arises in a case where no statutory

definition of that expression has been given in the relevant piece of legislation. At page 164 of Aiyar's Law Lexicon of British India (1940 Edition), the word "business" in its larger sense has been stated to mean "an affair requiring attention and care; that which busies or occupies one's time, attention, and labour as his chief concern." In the same passage the word "business" is mentioned to convey, in the narrower sense, mercantile pursuits; that which one does for a livelihood; occupation; employment; as, the business of a merchant; the business of agriculture." It has finally been stated that "the word 'business' is of large signification, and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors." Referring to the larger sense of the word, it has again been stated at page 165 that 'business is that which engages the time, talents and interest of a man; it is what a man proposes to himself; what belongs to a person to do or see done, that is properly his business; and a person is bound either by the nature of his engagements, or by private and personal motives, to perform a service for another.

...

27. After carefully considering the law laid down in all the above cases. I am Inclined to hold :- (1) That the word "business" is by itself not a word of art and is capable of being construed both in the wider as well as in the narrower sense depending on the context in which it occurs.

..."

Further, the Hon'ble High Court of Madras in the matter of *P. Vairamani Ammal vs. K.N.K.R.M. Kannappa* decided on January 3, 1970, held as follows:

"...The Oxford Dictionary gives the meaning of the word "business" as "being busy, task, duty...habitual occupation, profession, trade, serious work". It is, therefore, to be seen that the word has a very wide import and would cover every activity where men keep themselves busy. In Halsbury's Laws of England, 3rd Edition, Volume 38, the word 'business' is stated as a wider term than and not synonymous with, trade and means practically anything which is an occupation as distinguished from a pleasure..."

13. In the light of the aforementioned orders of the Hon'ble High Courts, it is noted that to correctly interpret the true scope of the word "business", it has to be seen as to

whether the word “business” in Rule 8 (3)(f) of SCRR has been used in a narrower sense or in a broader sense, as SCRR has not defined the word “business”. To answer the above question, one has to understand the context in which the word “business” has been used Rule 8 (3)(f) of SCRR. I am of the view that the said Rule contemplates clear segregation of various activities of the trading member so as to keep its primary operational business in securities market clearly separated from its other activities so as to ensure that various risks emanating from such other activities which are not incidental or consequential to its business as a trading member, does not affect the interest of its clients in the securities market. Therefore, the word “business” in Rule 8 (3)(f) of SCRR has to be interpreted in a broader sense so as to rule out any activity / affairs of a trading member which may result in creating personal financial liability for the trading member that may cause prejudice to the interests of its investors clients. It is immaterial whether the other activity / affairs of the trading member was restricted to its related parties or it was temporary in nature. The impugned other loan transactions would have no doubt occupied IGSL’s time, attention and labour and the nature of the engagement is such that both the parties to the loan transaction are bound by its terms and conditions. Hence, it is held that the loan transaction between IGSL and its subsidiaries is a business activity and the submissions of IGSL in this regard, are devoid of any merit.

14. It has been submitted by IGSL that interest earned from its subsidiaries comprises only a small portion of its business and that the loan was given from its own funds and not from borrowed funds or from client’s funds. I see no merit in the aforesaid submissions of IGSL since, once it is held that the impugned activity is a business activity which may result in fastening personal financial liability on the trading member and the activity of lending funds was not incidental to or consequent upon its securities business, the source of carrying out such activity or the result / outcome of carrying out such activity, are not relevant considerations under Rule 8 (3)(f) of SCRR.
15. IGSL has further contended that its networth was far in excess of loans advanced by it to its subsidiaries and in no manner could have impacted its financial strength. Firstly, it has not been alleged in the SCN that by advancing the loans, there has been an

adverse impact on IGSL's financial strength. The SCN has simply and explicitly alleged that by advancing the loans to its subsidiaries, IGSL has violated Rule 8 (3)(f) of SCRR. Secondly, it is not open to IGSL to interpret Rule 8 (3)(f) of SCRR by bringing in parameters which are extraneous to the said Rule. Therefore, the contention of IGSL does not hold good. The rule simply prohibits the *Notices* from carrying out activities other than the activities related to or incidental to the securities market. The rule does not permit carving out any exception permitting a trading member to engage in activities other than the activities of securities business, even with subject to any caveat.

16. IGSL has referred to SEBI circular dated October 21, 1993 which pertain to capital adequacy norm and also to the Explanation to networth given under SEBI (Stock Brokers) Regulations, 1992 to drive home the point that it is permissible for the trading members to advance loans to its associates from their surplus. It is observed that the IGSL's reading of the aforesaid provisions of securities laws is selective and misplaced. The aforesaid provisions have to be read along with other applicable provisions of securities laws which in the instant case is Rule 8 (3)(f) of SCRR. The explanation can't be read in isolation as an independent provision, but has to be read as an explanation to a substantive provision, which itself prohibits engaging in other business activities like the activities of borrowing and lending as found in the instant case. Further, the explanation only clarifies that debts and advances overdue for more than three months can't be considered while computing the net worth of a stock broker. The said explanation is not an independent provision and was to provide a clarification that debts and advances given for the purpose of activities attached to or incidental to the securities business and are overdue for more than three months, shall not be taken into consideration while computing the networth qualification of a stock broker. The above explanation does not create any new right, duty or liability but only clarifies that while computing the networth of a stock broker, the amount or asset in the form of loan and advances, which is due for more than a specified period, ought not to be considered for determining the networth criteria. However, in this case, the law enshrined in the Rule 8 (3)(f) of SCRR unequivocally prohibits any business activity which may result in a personal financial liability for a trading

member, provided that such business activity is not in connection with or incidental to or consequential upon the securities business. Therefore, on a holistic reading of the aforesaid provisions, one can easily infer that so long as the loans and advances given by the trading member are in connection with or incidental to or consequential upon the securities business of the *Noticee*, they are permissible activities for the trading member which is however, not the case with the *Noticee* in the instant case. Hence, the submission of IGSL that it is permissible for the trading members to advance loans to its associates from their surplus, does not hold stand the scrutiny of the extant law governing the Trading Members / Stock Brokers under the SCRR.

17. IGSL has placed reliance on the Adjudication Order in the matter of *Geojit BNP Paribas Financial Services Ltd.*, to justify inter corporate loans given by an intermediary. I have perused the said Adjudication Order. I note that the said Adjudication Order was passed based on a very narrow interpretation of the purpose of Rule 8 (3)(f) of SCRR by the Adjudicating Officer which as per him, was to prohibit the stock brokers from investing the clients' money in other businesses. I do not concur with the said view of the Adjudicating Officer. As noted in the preceding paragraphs, under Rule 8 (3)(f) of SCRR any kind of business activity which may incur financial liability on the trading member is prohibited, if the said business activity is not incidental to or consequential upon the securities business and not merely if the purpose of the loan is investing clients' money in its other businesses. In any event, findings given in an order by an authority of SEBI is not binding in nature. Such findings and observation could at the best, may have persuasive value and in the instant proceedings, for the reason stated above, I prefer to defer from the findings held in the order relied upon by the *Noticee*.
18. In view of the aforesaid discussions, it is held that IGSL has engaged in a business activity other than that of securities thereby fastening personal financial liability on it by extending loans to its subsidiary companies. The same has resulted in violation of Rule 8 (3)(f) of SCRR by IGSL.
19. I note that the DA has recommended that IGSL may be issued with warning and advised to ensure strict compliance with the requirement of Rule 8 (3)(f) of SCRR in future, failing which such delinquency will be viewed seriously. In the facts and

circumstances of the case, I agree with the recommendation given by the DA which would meet the ends of justice in the instant matter.

Directions

20. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 12 (3) and 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 27 (5) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby strongly warn Inventure Growth and Securities Ltd. and advise it to ensure strict compliance with Rule 8 (3)(f) of SCRR in future.

21. The Order shall come into force with the immediate effect.

22. A copy of this order shall be forwarded to Inventure Growth and Securities Ltd.

-Sd-

Date: November 14, 2022

Place: Mumbai

**S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**