BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/NH/RJ/2023-24/30078]

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

Swastika Investmart Limited
PAN AABCS6585J
SEBI Registration Number INM000012102

In the matter of merchant banking activities of Swastika Investmart Limited

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A. BACKGROUND

1. Swastika Investmart Limited (hereinafter referred to as '**Noticee'**) is registered with Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) as a Merchant Banker (hereinafter referred to as '**MB'**) having registration number INM000012102.

2. SEBI had conducted an inspection of the Noticee for the period from April 01, 2021 to March 31, 2023 (hereinafter referred to as **'inspection period'**). The findings of the said inspection were communicated to the Noticee vide letter dated May 30, 2023. In response to the findings in the inspection report, Noticee submitted a reply vide letter dated June 08, 2023.

3. Based on the findings of the inspection of the Noticee and considering the reply of the Noticee, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the following provisions:

   3.1. Regulations 3(1) and 4(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 and

3.2. SEBI Notifications dated March 11, 2013 and August 02, 2013 issued under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as '**AO'**) vide communique dated February 09, 2024 under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter referred to as '**SEBI Act'**) and under 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 Section 15HB of the SEBI Act for the alleged violations committed by Noticee as mentioned above.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter referred to as '**SCN**') bearing No. SEBI/HO/EAD2/NH/RJ//2024/6325 dated February 15, 2024, was issued to the Noticee under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 15HB of SEBI Act for the aforesaid alleged violations.

6. The SCN dated February 15, 2024, *inter alia*, alleged the following:

"…

- *It is alleged in the inspection report that two Key Managerial Personnel (hereinafter referred to as '**KMPs'**) of Noticee, Mr. Sunil Nyati and Ms. Anita Nyati and the Compliance Officer of Noticee, Ms. Shikha Bansal did not have the requisite NISM certifications in terms of Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with SEBI Notifications dated March 11, 2013 and August 02, 2013 during the inspection period.*
- *In this regard, as mentioned in the PIA report, Noticee, vide letter dated June 08, 2023, has, inter alia, submitted as under:*

  "…

We would like to inform you that we have taken immediate action to rectify the situation. We have enrolled the above-mentioned individuals for the respective NISM certification exams and enclosed the enrollment letter with this letter. We understand the importance of these certifications and their significance in ensuring compliance with SEBI regulations. Also, I would like to inform that Mr. Mohit has the NISM-Series-IX certificate he is now the Compliance officer of the Merchant Banking Division.

Additionally, we have implemented measures to ensure that all future certification requirements are met within the specified time frames. We recognize the significance of upholding regulatory standards and are committed to maintaining a highly compliant environment at SIL. …"

- *Thus, it is alleged in the PIA that two KMPs of the Noticee, Mr. Sunil Nyati and Ms. Anita Nyati have failed to comply with the NISM certification requirement in terms of the mandate of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 during the inspection period. Further, it is alleged that the Compliance Officer of the Noticee has not complied with the certification requirement provided under SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 during the inspection period.*
- *In view of the above, Noticee is alleged to have violated Regulations 3(1) and 4(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with SEBI Notifications dated March 11, 2013 and August 02, 2013.*

…"

7. The Noticee was advised to submit its reply to SCN within 14 days from the date of receipt of the SCN. Subsequently, the Noticee, vide letter dated February 27, 2024, *inter alia,* submitted the following reply to the SCN:

"…

- *In order to rectify the above mentioned observation, we have taken immediate step by registering our KMPs for the NISM certification on the NISM Portal. However, due to some prior engagement of our KMPs, we were not able to enroll them for examination on immediate basis, as and when they were available we enrolled them for the examination for 31st October, 2023 and both the KMP's appeared and cleared the required 'NISM Series – IX: Merchant Banking Certificate Examination'. The certificates for both of them were also shared with SEBI Officials via mail dated 31st October, 2023. We also want to inform to your good office that our KMPs are having more than 30 years of experience of the industry.*

- *To Comply with the regulatory requirement, we already changed our Compliance Officer w. e. f. May, 2023 from Ms. Shikha Bansal to Mr. Mohit Goyal as a new Compliance Officer, who was holding valid NISM certificate 'NISM Series – IX: Merchant Banking Certificate Examination' during the period of inspection and in relation with holding of 'NISM Series – III - A: Securities Intermediaries Compliance (Non-Fund) Certification Examination' by our compliance officer as per regulation:*
  "If any new compliance officer which has been appointed in any organization, he / she can avail 'NISM Series – III - A: Securities Intermediaries Compliance (Non-Fund) Certification Examination' within one year from his/her appointment".
- *In line with the above mentioned clause:*
  Our new compliance Officer have cleared his 'NISM Series – III - A: Securities Intermediaries Compliance (Non-Fund) Certification Examination' in due course, examination certificate of our Compliance Officer was also shared with SEBI Officials via mail dated 31st October, 2023.
- *It is further to be noted that our past Compliance Officer i.e. Ms. Shikha Bansal is holding Company Secretory degree and having post qualification experience of more than 8 Years.*
- *With this we hereby want to convey that both of our KMP's and Compliance Officer is having a vast experience of the industry and they are well versed with all the rules and regulations introduced by SEBI with regards to Merchant Banker.*
- *As per above explanation and submission, we hereby submit that as on date we have all the valid NISM Certificates which any Merchant Banker needs to hold in the organization. We also have implemented measures that all the employees who are working in Merchant Banking division must hold valid NISM Certificate and to ensure that all future certification requirements are met within the specified time frames and none of such issues occur in future. We recognize the significance of upholding regulatory standards and are committed to maintaining a highly compliant environment at Swastika.*

  …"

8. In consonance with the Adjudication Rules, an opportunity of hearing on March 05, 2024 was granted to the Noticee vide Hearing Notice dated February 28, 2024.

9. However, the Noticee citing its inability to attend the hearing on March 05, 2024, requested an adjournment vide email dated March 01, 2024. The said request was acceded to and the hearing was rescheduled to March 11, 2024.

10. The hearing was held on March 11, 2024. Mr. Mahendra Kumar Sharma (Authorized Representative of the Noticee) attended the hearing through videoconferencing and reiterated the submissions made by the Noticee in its letter dated February 27, 2024.

11. It is noted that the SCN along with the annexures and the Hearing Notice were duly served on the Noticee. The Noticee was granted sufficient opportunities to make submissions in reply to the SCN and of personal hearing. Thus, the principles of natural justice were adhered to.

D. CONSIDERATION OF ISSUES AND FINDINGS

12. After careful perusal of the material on record, I note that the issues that arise for consideration in the present case are as follows:

    I. Whether Noticee has violated Regulations 3(1) and 4(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Notifications dated March 11, 2013 and August 02, 2013 issued under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007?

    II. Does the violation, if any, on the part of Noticee attract a monetary penalty under Section 15HB of the SEBI Act?

    III. If so, what would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

13. The relevant extracts of the provisions of law, allegedly violated by Noticee, are mentioned under:

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*

…”

“***Manner of obtaining certificate***

4.(1) Subject to the provisions of this regulation, an associated person may obtain the certificate in any of the following manners, namely:

(a) by passing a certification examination conducted by any organization or self-regulatory organization approved or engaged as may be specified by NISM from time to time; or

(b) by obtaining such number of classroom credits accumulated through attending classes on such subjects as may be specified by NISM from time to time; or

(c) by delivering such number of formal classroom sessions in all or specific programmes of continuing professional education as may be specified by NISM from time to time ...”

Notification dated March 11, 2013 issued under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007

“…

The associated persons functioning as ***compliance officers*** *of intermediaries registered with the Board as stock brokers, or depository participants, or* ***merchant bankers****, or underwriters, or bankers to the Issue, or debenture trustees or credit rating agencies, shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as “NISM”) by passing the* ***NISM-Series-III A****:* ***Securities Intermediaries Compliance (Non-Fund) Certification Examination*** *(hereinafter referred to as “SICCE”)*

…”

“…

Provided that an intermediary, who engages or employs any such associated persons functioning as compliance officer after the date of this notification, shall ensure that such person obtains certification by passing SICCE within one year from the date of his employment.” (Emphasis supplied)

Notification dated August 02, 2013 issued under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007

“…

Merchant Bankers registered with the Board shall ensure that ***atleast two associated persons designated as Key Management Personnel****…*

shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as ‘NISM’) by passing the ***NISM-Series-IX: Merchant Banking Certification Examination*** *(hereinafter referred to as ‘MBCE’)*

…”

“…

Provided that a Merchant Banker, who engages or employs any such associated person after the date of this notification, shall ensure that such person obtains certification by passing MBCE within one year from the date of his employment.” (Emphasis supplied)

…”

E. CONSIDERATION

I. Whether Noticee has violated Regulations 3(1) and 4(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Notifications dated March 11, 2013 and August 02, 2013 issued under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007?

14. In the SCN, it was alleged that during the inspection period, the Noticee did not ensure that atleast two of its associated persons who were designated as Key Management Personnel (hereinafter referred to as ‘**KMPs’**) had obtained the ‘NISM-Series-IX: Merchant Banking Certification’ as mandated under Regulation 3(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Notification dated August 02, 2013. Further, the compliance officer of the Noticee did not obtain the ‘NISM-Series-III A: Securities Intermediaries

Compliance (Non-Fund) Certification' as mandated under Regulation 3(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Notification dated March 11, 2013.

15. It is an undisputed fact that Mr. Sunil Nyati and Ms. Anita Nyati were the KMPs and Ms. Shikha Bansal was the compliance officer of the Noticee during the inspection period. It is also noted that the Noticee has not disputed the finding that the said two KMPs and the compliance officer did not have the necessary NISM certification during the inspection period. In this regard, the Noticee, in its letter dated June 08, 2023, has, *inter alia,* submitted as under:

"…

We would like to inform you that we have taken immediate action to rectify the situation. *We have enrolled the above-mentioned individuals for the respective NISM certification exams and enclosed the enrollment letter with this letter. We understand the importance of these certifications and their significance in ensuring compliance with SEBI regulations.*

…" (Emphasis Supplied)

16. Further, the Noticee, vide letter dated February 27, 2024, has, *inter alia,* stated the following in its reply to the SCN:

"…

In order to rectify the above mentioned observation, we have taken immediate step by registering our KMPs for the NISM certification on the NISM Portal. However, due to some prior engagement of our KMPs, we were not able to enroll them for examination on immediate basis*, as and when they were available we enrolled them for the examination for 31st October, 2023 and both the KMP's appeared and cleared the required 'NISM Series – IX: Merchant Banking Certificate Examination'. The certificates for both of them were also shared with SEBI Officials via mail dated 31st October, 2023. We also want to inform to your good office that our KMPs are having more than 30 years of experience of the industry.*

To Comply with the regulatory requirement, we already changed our Compliance Officer w. e. f. May, 2023 from Ms. Shikha Bansal to Mr. Mohit Goyal as a new Compliance Officer*, who was holding valid NISM certificate 'NISM Series – IX: Merchant Banking Certificate Examination' during the period of inspection* …" (Emphasis Supplied)

17. From the Notifications dated March 11, 2013 and August 02, 2013, I find that it is the responsibility of the intermediary i.e. Noticee to ensure compliance with the certification requirement as provided under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007. In this regard, from the material on record and submissions of the Noticee, I find that the Noticee did not ensure that atleast two of its associated persons who were designated as KMPs and its compliance officer had the requisite NISM certification during the inspection period. Further, it is an admitted fact that the two KMPs of the Noticee had obtained the necessary NISM certifications much after the inspection period. The compliance officer, during the inspection period, did not have the necessary NISM certification. It is, further, noted that the present compliance officer was appointed only on May 09, 2023 i.e. post inspection.

18. Though it was submitted that the KMPs and the compliance officer have obtained the necessary NISM certifications and therefore complied with the regulatory requirements, it is a fact that the KMPs and the then compliance officer did not have the NISM certifications during the inspection period.

19. In view of the above, I conclude that Noticee has violated Regulations 3(1) and 4(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Notifications dated March 11, 2013 and August 02, 2013 issued under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

II. Does the violation, if any, on the part of Noticee attract a monetary penalty under Section 15HB of the SEBI Act?

III. If so, what would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

20. From the previous paragraphs, it has been established that Noticee has violated Regulations 3(1) and 4(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Notifications dated March 11, 2013 and August 02, 2013 issued under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007. Accordingly, Noticee is liable for payment of a monetary penalty in terms of Section 15HB of the SEBI Act.

21. The text of the abovesaid Section 15HB of the SEBI Act is reproduced below:

SEBI Act

"15HB. 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."

22. While determining the quantum of penalty under Section 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

SEBI Act

"15J. Factors to be taken into account by the adjudicating officer

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."

Factors Considered While Imposing Penalty

23. The available records neither specify disproportionate gains/unfair advantage made by Noticee nor the loss, if any, suffered by the investors due to such violations. As regard the repetitive nature of the default, I note that the material on record has not brought to fore any penalty imposed by SEBI in the past against the Noticee in its role as a merchant banker.

24. Noticee, being a registered intermediary, was under a statutory obligation to comply with the mandate of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 in letter and spirit. In this regard, I note that Hon'ble SAT in the matter of **Premchand Shah and Others v. SEBI**[1], *inter alia*, held as under: *"...When a law prescribes a manner in which a thing is to be done, it must be done only in that manner...".*

25. I have taken into account the fact that as on date, two associated persons who are designated as KMPs, Mr. Sunil Nyati and Ms. Anita Nyati have obtained the 'NISM-Series-IX: Merchant Banking Certification' and the present compliance officer, Mr. Mohit Goyal has obtained the 'NISM-Series-III A: Securities Intermediaries Compliance (Non-Fund) Certification'.

26. The aforementioned factors have been taken into consideration while adjudging the penalty.

F. <u>ORDER</u>

27. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the

[1] Appeal No. 192 of 2010 dated February 21, 2011.

exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I, hereby, impose the following penalty on Noticee:

Table 1

Noticee Name	**Violations**	**Penalty Provision**	**Penalty**
Swastika Investmart Limited	Regulations 3(1) and 4(1) of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 read with Notifications dated March 11, 2013 and August 02, 2013 issued under Regulation 3 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007	Section 15HB of the SEBI Act	Rs. 3,00,000/- (Three Lakhs only)

28. I am of the view that the said penalty is commensurate with the lapses/omissions on the part of Noticee.

29. Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT > Orders > Orders of AO > PAY NOW.

30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to the Securities and Exchange Board of India.

Date: March 12, 2024 **N HARIHARAN**

Place: Mumbai **ADJUDICATING OFFICER**