<u>BEFORE THE ADJUDICATING OFFICER</u>

<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>

[ADJUDICATION ORDER NO. Order/BM/DS/2022-23/21222-21227]

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

In respect of

Mr. C Parthasarthy PAN: AAFPC7617L	Mr. Bhagwan Dass Narang PAN: AAEPN3092R
Ms. Jyothi Prasad PAN: AAEPP6028P	Mr Ashish Agrawal PAN: ABVPA4409P
Mr. Vikas Rajpal PAN: BDOPR9829J	Mr. Meka Yugandhar PAN: ADKPM7260M

In the matter of

KARVY STOCK BROKING LIMITED

<u>FACTS OF THE CASE</u>

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted inspection of M/s Karvy Stock Broking Limited (hereinafter referred to as “**PMS-Karvy” / “the Company**”) with respect to its portfolio management activities from December 05, 2019 to December 13, 2019. The period covered for the inspection was from April 01, 2018 to March 31, 2019 (hereinafter referred to as “**inspection period**”). PMS-Karvy is registered as portfolio manager with SEBI registration no. INP000001512. Mr. C Parthasarthy (hereinafter referred to as “**Noticee 1**”), Mr. Bhagwan Dass Narang (hereinafter referred to as “**Noticee 2**”),

Ms. Jyothi Prasad (hereinafter referred to as "**Noticee 3**"), Mr. Ashish Agrawal (hereinafter referred to as "**Noticee 4**"), Mr. Meka Yugandhar (hereinafter referred to as "**Noticee 5**") were directors of the Company and Mr. Vikas Rajpal (hereinafter referred to as "**Noticee 6**") was the compliance officer at the time of occurrence of the alleged violations (Noticees 1 to 6 are hereinafter collectively referred to as "**Noticees**").

2. The findings/ observations made during the course of inspection were communicated to PMS-Karvy by SEBI vide mail dated June 22, 2020. After examining the reply submitted by the PMS-Karvy vide letter dated August 09, 2020, it has been alleged that the Noticees violated various provisions of SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as "**Portfolio Managers Regulations, 1993**") and applicable SEBI Circulars. The violations alleged to have been committed by the Noticees are summarised in the table below:

Table - 1

Sr. No.	Alleged Violations	Regulatory Provisions
1	Failure to appoint appropriately qualified or experienced Principal Officer	Regulation 6(2)(c) of Portfolio Managers Regulations, 1993
2	Contrary provisions in regard to placement fee in the Disclosure Document	Regulation 13 of Portfolio Managers Regulations, 1993 read with clauses 1 and 9 of Schedule III of Portfolio Managers Regulations, 1993
3	Provisions in the Portfolio Management Agreement with regard to outsourcing of core activities	Regulation 13 of Portfolio Managers Regulations, 1993 read with Clauses 1 of Schedule III (Code of Conduct) of Portfolio Managers Regulations, 1993 and Clause

Sr. No.	Alleged Violations	Regulatory Provisions
		5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011
4	No uniformity in provisions of termination of agreements with clients	Regulation 13 of Portfolio Managers Regulations, 1993 read with Clauses 1 and 3 of Schedule III of Portfolio Managers Regulations, 1993
5	Non provision of details of penalties, pending litigation or proceedings, findings of inspection or investigations for which action may have been taken or initiated by any regulatory authority against PMS-Karvy, in the Disclosure Document.	Regulation 14(2)(a) of Portfolio Managers Regulations, 1993 read with sub-clause 4, Clause III of the Model Disclosure Document for Portfolio Management in Schedule V of Portfolio Managers Regulations, 1993 and Clause 3(b) of SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010
6	Open positions in respect of allocation of purchases of securities effected in a day	Regulation 16(5) of Portfolio Managers Regulations, 1993
7	Non- rectification of deficiencies made in internal auditor's report within two months of receipt of audit report half year ended September 30, 2018 and March 31, 2019	Regulation 15 (2) of Portfolio Managers Regulations, 1993 read with Clause 8 of Schedule IV of Portfolio Managers Regulations, 1993 and Regulation 22 of Portfolio Managers Regulations, 1993
8	Failure to appoint qualified or experienced Compliance Officer and failure to report	Regulations 23A(1) and 23A(2) of Portfolio Managers Regulations, 1993

Sr. No.	Alleged Violations	Regulatory Provisions
	non-compliance in regard to appointment of Principal Officer by the Compliance Officer	
9	Failure to provide correct information to SEBI in regard to disposal dates of complaints filed by its clients with PMS-Karvy and non-maintenance of proper records pertaining to redressal of complaints	Regulation 9A(1)(c) read with regulation 15(6) of Portfolio Managers Regulations, 1993

3) SEBI initiated adjudication proceedings against the Noticees under section 15HB of SEBI Act, 1992 for the alleged violations of the relevant provisions as stated above.

APPOINTMENT OF ADJUDICATING OFFICER

4) The undersigned was appointed as the Adjudicating Officer **(AO)** vide Order dated October 21, 2021 under Section 15-I of the SEBI Act, 1992, rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), to inquire into and adjudge under section 15HB of SEBI Act, 1992 the violations of aforesaid provisions alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5) Show Cause Notice No. SEBI/EAD/BM/DS/2812/2022 dated January 24, 2022 (hereinafter referred to as **"SCN"**) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 and rule 4 of SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against them and why penalty, if any, under Section 15HB of SEBI Act, 1992 be not imposed on the Noticees.

6) Noticee 1 - SCN was duly delivered to Noticee 1's email address and Hyderabad address. However, no reply was received from Noticee 1 as on March 22, 2022. In the interest of natural justice, an opportunity of hearing was granted to Noticee 1 on April 21, 2022. However, Noticee 1 did not appear for hearing. Upon contacting officials of Karvy group, it was found that Noticee 1 is lodged under judicial custody at Central Prison, Chanchalguda, Hyderabad. Thereafter, the Superintendent of Central Prison, Chanchalguda, Hyderabad was requested vide letter dated May 12, 2022 to hand over enclosed copy of SCN and hearing notice dated May 12, 2022 to Noticee 1, wherein he was advised to appear for hearing on June 03, 2022. The same was handed over by the Superintendent to Noticee 1 and proof of acknowledgement from Noticee 1 is available on record. However, Noticee 1 did not appear or authorize any person to appear for the scheduled hearing. In the interest of natural justice, another opportunity of hearing was provided to Noticee 1 vide letter dated June 03, 2022, wherein he was advised to appear for hearing on June 10, 2022. The authorised representative of Noticee 1 (hereinafter referred to as "**AR**"), vide mail dated June 09, 2022 requested for 15 days' time to make submissions and appear for hearing. Vide letter dated June 16, 2022, he was advised to appear before the undersigned on July 07, 2022. Vide letter dated June 17, 2022, submisisons were made by the AR. The AR appeared on the scheduled date and reiterated the submissions made vide letter dated June 17, 2022 and confirmed that there are no additional submissions to be made in the matter.

7) Noticees 2 and 3 - SCN was duly delivered to Noticees 2 and 3 via digitally signed email and Speed Post Acknowledgement Due (SPAD). Vide letters dated April 02, 2022, Noticees 2 and 3 confirmed receipt of the SCN and nominated and informed their common authorised representative (AR). However, no reply was received from Noticees 2 and 3 as on March 22, 2022. In the interest of natural justice, an opportunity of hearing was granted to Noticees 2 and 3 on April 21, 2022. Noticees 2 and 3 made submissions vide letter dated April 19, 2022. The AR appeared on behalf of Noticees 2 and 3 on the scheduled date and time of hearing and reiterated submissions made vide letter dated April 19, 2022. The AR made additional submissions during the course of hearing, which the AR confirmed to submit in writing. During the course of hearing, the AR was asked by the undersigned to submit following information - Documents showing due diligence on part of the Noticees 2 and 3, being Independent Director, regarding redressal of investors' complaints and addressing audit observations; and, documents showing whether Noticees 2 and 3 were present in the Board meeting wherein Noticee 6 was appointed as Principal and Compliance Officer of KSBL. Additional submissions were made by Noticees 2 and 3 on May 05, 2022.

8) Noticee 4 - SCN was duly delivered to Noticee 4 via digitally signed email and Speed Post Acknowledgement Due (SPAD). Vide letter dated February 03, 2022, authorised representative (AR) of Noticee 4 requested for copy of SCN and also requested for inspection of documents relied upon by SEBI. Vide mail dated February 04, 2022, inspection was granted on February 10, 2022. The AR requested for rescheduling of the inspection, which was considered and thereafter, inspection was provided on February 16, 2022. Inspection was conducted on the scheduled date and the AR was advised to submit reply to the SCN by March 05, 2022. The recordings of the proceedings of inspection are available on record. Vide mail dated March 03, 2022, the AR requested for 3 weeks' time to submit reply to the SCN. The request was considered by the undersigned and Noticee 4 was advised to submit reply on or before March 17, 2022. Noticee 4 submitted reply to

the SCN vide letter dated March 16, 2022. Vide hearing notice dated March 22, 2022, Noticee 4 was advised to appear before the undersigned on April 11, 2022. The AR appeared for hearing on the scheduled date and time and reiterated the submissions already made vide letter dated March 16, 2022. The AR made additional submissions during the course of hearing, which the AR confirmed to submit in writing. During the course of hearing, the AR was asked by the undersigned to submit following information - Documents in regard to appointment of Noticee 4 as nominee director of KSBL; Documents showing whether the Noticee 4 was present in the Board meeting wherein Mr. Vikas Rajpal was appointed as Principal and Compliance Officer of KSBL. Noticee 4 made additional submissions till April 25, 2022.

9) Noticee 5 – SCN was delivered to the email address of Noticee 5 available on record. However, no reply was received from Noticee 5 as on March 22, 2022. In the interest of natural justice, an opportunity of hearing was granted to Noticee 5 on April 21, 2022. However, Noticee 5 did not appear for hearing or submitted his reply to the SCN. Another opportunity of hearing was provided to Noticee 5 vide hearing notice dated April 29, 2022, whereby Noticee 5 was advised to appear before the undersigned on May 10, 2022. Vide mail dated May 06, 2022, Noticee 5 informed that he has not received copy of SCN, and intimated its communication details while requesting for a copy of the SCN along with annexures. Vide mail dated May 06, 2022, Noticee 5 was provided a copy of SCN and the annexures. Vide mail dated May 10, 2022, Noticee 5 requested for time to submit reply to the SCN and also requested for inspection of documents. Vide mail dated May 12, 2022, Noticee 5 was provided an opportunity to inspect relevant and relied upon documents on May 20, 2022. Authorised representative (AR) of Noticee 5 visited the office of undersigned on scheduled date and time and duly inspected the documents. Vide mail dated May 31, 2022, Noticee 5 was advised to appear before the undersigned for hearing on June 09, 2022. Vide mail dated June 08, 2022, authorised representative of Noticee 5 informed that settlement application has

been filed by Noticee 5 and requested to keep the hearing in abeyance. Vide mail dated June 09, 2022, Noticee 5 was informed that the hearing will not be kept in abeyance, and he was advised to appear on the scheduled date and time. The AR appeared on the scheduled time and requested for time till June 23, 2022 for making submissions to the SCN and also requested for another opportunity of hearing, which was acceded by the undersigned. Noticee 5 submitted its reply vide letter dated June 22, 2022. Vide mail dated July 29, 2022, Noticee 5 was advised to appear for hearing on August 05, 2022. The AR appeared for the scheduled hearing and reiterated the submissions already made vide letter dated June 22, 2022. The AR was asked whether the irregularities alleged in the SCN were brought to the notice of audit committee, of which Noticee 5 was a member and was also asked to submit dates of board meetings held in FY 2018-19, which were attended by Noticee 5. The AR sought time till August 17, 2022 to submit the same, which was acceded by the undersigned. Vide letter dated August 17, 2022, Noticee 5 submitted its response to the queries. Vide mail dated November 02, 2022, Noticee 5 was informed about rejection of the settlement application filed by him. Since comprehensive view was to be taken after considering the role of Noticee 5, the passing of this Order was kept in abeyance. Vide mail dated November 03, 2022, Noticee 5 was granted another opportunity of hearing on November 09, 2022, The AR appeared on the scheduled date and time and reiterated the submissions already made vide letters dated June 22, 2022 and August 17, 2022. Noticee 5 also made some additional submissions, which it submitted in writing on the same day.

10) Noticee 6 – Noticee 6 made submissions to the SCN vide mail dated February 13, 2022. In the interest of natural justice, an opportunity of hearing was granted to Noticee 6. Vide notice dated March 22, 2022, Noticee 6 was advised to appear before the undersigned on April 11, 2022. Noticee 6 appeared for the scheduled hearing and reiterated the submissions already made vide mail dated February 13, 2022.

11) The submissions made by the Noticee 1 are as summarized below:

a) *Noticee 1 denied violations of all provisions alleged to have been violated in the SCNsubmitted that the lapses pointed out in the Notice are merely technical, procedural, and venial in nature. Same had no impact whatsoever on KSBL's clients' interests in any manner.*

b) *Consequent to, inter alia, various orders (including order dated 22.11.19 & 24.11.20) passed by SEBI and directions passed therein against KSBL in its capacity as - the Stock Broker and Depositary Participant - with whom KSBL's PMS clients were maintaining broking and demat accounts, KSBL's PMS activities came to a grinding halt and KSBL has not been undertaking any PMS activities, since then. It may also be noted that consequent to the notice issued by SEBI, Power of Attorney taken for operating the demat accounts of the clients, KSBL could not operate the demat accounts of the PMS. In fact, consequent to regulatory actions by Exchanges and Depositories, Trading and demat accounts of clients have been transferred to other intermediaries. Demat accounts of PMS clients in KSBL-DP have been transferred to FL. Under these circumstances, the management had decided to surrender the Certificate of Registration to SEBI. The actual process of filing the application has got delayed, inter alia, due to arrest of Noticee 1, consequent to multiple proceedings being initiated against the Karvy group by various Regulators and Investigating Agencies and exodus of employees etc.*

c) *<u>Appointment of Principal Officer not made as per PMS Regulation 1993</u>*

   i) *Since inception of KSBL's PMS operations, all its Principal Officers have been appointed in accordance with the procedure and qualifications prescribed in the PMS Regulations. However, during the year 2018-19, many of KSBL's employees had resigned from KSBL and therefore, KSBL had to conduct the PMS business with very limited staff. On November 10, 2018, the then Principal Officer Mr. Rupin Shah who was duly qualified as per PMS Regulations, had resigned from the Company with immediate* *effect. Post resignation of Mr. Rupin Shah, KSBL was in the process of hiring an appropriately qualified/experienced person and the same took some time. Under the aforesaid circumstances, wherein Mr. Rupin Shah resigned with very short notice resulting in sudden creation of vacuum, KSBL had keeping the interest of investors in mind, identified and appointed an existing staff member Mr Vikas Rajpal as Principal Officer till a candidate appropriate for this position is identified. During that time he was the only officer whose qualification and experience were close to the requirements of a Principal Officer, as prescribed by SEBI.*

ii) It may be noted that when Mr Vikas Rajpal was appointed as the Principal Officer, he had around 7.5 years of experience in the field of Portfolio Management Services with excellent track record. Further, at the relevant time he had the experience of working as a Portfolio Manager, Stockbroker, Investment Advisor and as Fund Manager, since he had worked as Financial Analyst, Equity Research Analyst, Investment Analyst and Fund Manager in various reputed companies. Additionally, he had also completed the Research Analyst Module from National Institute for Securities Market ("NISM"),

iii) Subsequently, in June, 2020, KSBL had appointed Mr. Sachin Mittal as the Principal Officer, which was strictly in compliance with the PMS Regulations.

iv) No complaints were received against Mr. Vikas Rajpal as Principal officer from any of the clients. Thus it did not affect any one adversely and the alleged irregularity was merely technical and procedural.

d) <u>Contrary provisions in disclosure documents</u>

i) Only issue arising from the disclosures is whether the placement fee to be paid upfront or over a time period of 1 year, by the clients. Earlier, KSBL was charging the placement fee from clients upfront. Subsequently, during 2016-17 considering various representations from clients to deduct charges on a quarterly basis, in the interest of the clients, KSBL had changed the time period of charging placement fee in Annexure A- Section II of the *disclosure documents. Since FY 2016-17 placement fees was being charged on a quarterly basis spread over one year uniformly to all clients, instead of upfront fees.*

ii) *Inadvertently, while acceding to the representations of the clients, the concomitant change was not carried out, at the relevant time, in Section 10 of the disclosure documents. Same was nothing but an error of inadvertence.*

iii) *Under the circumstances, the alleged inadvertent lapse is an innocuous lapse with no adverse consequence on the clients' interests. Therefore, the allegations pertaining to the alleged 'misguiding', 'not giving true and adequate information about the fees', 'failure to observe high standards of integrity and fairness', 'professional dealings not effected in prompt, efficient and cost effective manner' etc. are misplaced in the facts and circumstances* of the case.

iv) *Clearly, the alleged violation is merely technical, venial and procedural in nature. As a result of the same, KSBL has not made any gains or derived any unfair advantage or caused any loss to the clients in any manner.*

e) *Provision of outsourcing of core activities in Model Portfolio Management Agreement:*

i) *There is no provision in the Portfolio Management Agreement with regard to outsourcing of core activities. KSBL has not outsourced the core activities to anyone. It appears that 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.*

ii) *At all points of time, actual core activities, including, picking the stocks for investment, timing of the investment, price at which investments are to be made, quantum of investments to be made etc were exclusively decided by the Portfolio Manager. Intent behind the alleged Clause No 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.*

iii) *Here it may be appreciated that even the inspecting officials in their Report have inter alia recorded that "It is however observed that the core activities have not been outsourced as on date of inspection" (Refer Pg 16 of Report on Inspection). Said observations also reinforce the contention that Clause No 2.18 in the Agreement has been read out of the context and that KSBL has never outsourced our core activities.*

iv) *Here it may be noted that till date KSBL has not received any complaint from any of its client stating that its core activities as a portfolio manager were outsourced to other agencies.*

f) *<u>Failure to maintain uniformity in provisions of termination of agreements with Clients :</u>*

i) *There was lack of uniformity in Clauses 12.4 & 12.5 of the Agreement. Same is an inadvertent error.*

ii) *However, KSBL had never terminated/suspended any client's account immediately/without prior notice except in circumstances such as death of the client or the client being banned by SEBI etc. Further, even there is no such observation in the SCN. It is quite pertinent to note that KSBL had not received any complaint from any of its clients stating that it had terminated/ suspended their accounts unilaterally by issuing a written notice of termination.*

g) *<u>Failure to provide certain details in the disclosure documents</u>*

i) *KSBL's Disclosure Document, as uploaded on the website at the relevant time had contained the details of penalties, pending litigation or proceeding, findings of inspection or investigations of which action may have been taken or initiated by any regulatory authority.*

ii) In the said Disclosure Document, at Annexure B/Pg 54, all the relevant particulars pertaining to the details of penalties, pending litigation or proceeding, findings of inspection or investigations of which action may have been taken or initiated by any regulatory authority, had been set out.

h) <u>Open Positions in respect of allocation of purchases of securities affected in a day</u>

i) The open positions were kept in respect of allocation of securities on 23-07-18 and 24-07-18. The same occurred due to the operational lapse, by the operations team. In this context, it may be appreciated that during the entire Inspection Period spanning over 1 year (i.e. from April 01, 2018 to March 31, 2019) only on 2 days there was open position in respect of allocation of securities. On the remaining days there was no open position in respect of allocation of securities. It is pertinent to note that no complaints have been received by KSBL from its clients in this regard. Said lapse was purely unintentional and an error of inadvertence.

i) <u>Non- rectification of deficiencies mentioned in Auditor's Report</u>

i) With regard to observations in Paras 17 to 18 of the Notice, pertaining to non-rectification of deficiencies mentioned in the Auditors Report, it was stated that the alleged differences-which are minimal and involve insignificant amount vis-à-vis the total amounts handled by PMS-Karvy, have arisen, due to operational reasons viz non identification of the individual clients to whom such balances pertained. Therefore, KSBL was not in a position to rectify the audit observation. It may also be noted that subsequently during April 2021. KSBL's bank accounts were frozen pursuant to directions issued by NSE. Further, subsequent to the FIR based on the Complaint from Indusind Bank and HDFC Bank, who had provided loan facilities to KSBL, further freeze has been imposed on the bank accounts.

j) <u>Failure to appoint appropriate Compliance Officer</u>

i) The allegation is not that KSBL had not appointed Compliance Officer, but that KSBL had not appointed an "appropriate" Compliance officer, based on alleged non-informing by the Compliance officer with regard to alleged discrepancy in the appointment of the Principal Officer.

ii) The appointment of the Principal officer was made under peculiar circumstances, wherein during the year 2018- 19 many of KSBL's employees had resigned from KSBL, including the then Principal Officer Mr. Rupin Shah -who had resigned from the Company with immediate effect. Post resignation of Mr. Rupin Shah, KSBL was in the process of hiring an appropriately qualified /experienced person and the same took some time and under the aforesaid circumstances, KSBL had, keeping the interest of investors in mind, identified and appointed an existing staff member Mr Vikas Rajpal as Principal Officer. During that time he was the only officer w hose qualification and experience w ere close to the requirements of a Principal Officer, as prescribed by SEBI.

iii) In view of the aforesaid, the alleged non-reporting to SEBI, with regard to alleged discrepancy in the appointment of the Principal Officer, be viewed leniently. The said violation was only technical, venial and procedural in nature.

k) <u>Failure to maintain and provide proper information of redressal of complaints</u>

i) As a Portfolio Manager at all points of time KSBL has ensured proper and timely handling of complaints and had taken appropriate action. During the relevant time all complaints received by KSBL were resolved/ redressed within the stipulated timeline of 30 days.

ii) In so far as the first complaint filed by S3 Solutions Pvt Ltd is concerned, same was received on July 07, 2018. Said complaint was regarding certain challenges. faced by them in KSBL's website/portal. Post receipt of the said complaint KSBL had taken necessary corrective steps and the same was informed to S3 Solutions Pvt. Ltd vide KSBL's email dated July 09, 2018.

The fact that KSBL had resolved the said investor's complaint within the specified period was also informed to SEBI Officials during the inspection and also in KSBL's reply to the Report on Inspection dated August 07, 2020.

iii) In so far as the second complaint filed by S3 Solutions Pvt Ltd is concerned, same was received on September 24, 2018 wherein they had raised a query about the exit load on its portfolio. On the same day itself, KSBL had responded to the said email. The fact that KSBL had resolved the said investors complaint within the specified period was informed to SEBI Officials during the inspection and also in KSBL's reply to the Report on Inspection dated August 07, 2020. Thus, the said violation was only technical, venial and procedural in nature

l) Following mitigating factors were also submitted by Noticee 1 –

i) The lapses pointed out in the Notice are merely technical, venial and procedural in nature. As a result of the alleged violations, KSBL has not made any gains or derived any unfair advantage. The alleged procedural lapses be seen in the context of KSBL's overall scale of operations handled by it at the relevant time.

ii) The alleged technical lapses were not deliberate and intentional and in contumacious disregard of provisions of law.

iii) The said technical violations are not serious in nature and the same have not impacted the interest of KSBL's PMS clients or the interests of securities market of clients in any manner.

iv) Admittedly, there are no allegations of indulging in unfair, fraudulent, and manipulative practices, qua KSBL (or its directors) while rendering PMS services to its clients.

v) Admittedly, there is no allegation that KSBL has misused or mis-utilized the funds/securities of the clients while rendering PMS services. Even there are no complaints from any of the clients in this regard.

vi) KSBL (or its directors) have not made any gains or derived any unfair advantage as a result of alleged technical and minor lapses. Further, KSBL *has not caused tosses to its clients in any manner as a result of alleged technical and minor lapses. The same has not been even alleged.*

vii) *The alleged violations have happened inadvertently and were not committed for personal benefit or with the intent to defraud the clients.*

viii) *KSBL has already stopped PMS activities since December 2019 consequent to disabling of POA on PMS demat accounts by regulators in November 2019. Further, management is in the process of surrendering KSBL's PMS Registration certificate to SEBI.*

12) Noticees 2 and 3 made similar submissions, which are as summarized below:

a) *It was submitted that there were no specific allegations against Noticees 2 and 3 in the SCN. That they have erroneously been roped in without appreciating the crucial fact that I am an Independent Director on the board of PMS-Karvy (as opposed to being a Whole Time/Executive -Director) and given my said status , I had a restricted and limited role to play in the affairs of PMS-Karvy. Further, I had no role to play in day to day operations of PMS-Karvy. Admittedly, the alleged breaches as set out in the SCN, pertain to the activities which are in the realm of day-to-day operations of PMS-Karvy. In the alleged violations committed by PMS- Karvy (as set out in the SCN based on Inspection observations), I had no role or involvement. Even there is nothing in the SCN to remotely indicate the same.*

b) *Noticee 2 is a senior citizen aged 77 years and was appointed as an Independent Director on the board of PMS-Karvy on June 30, 2015. Noticee 3 was appointed as an Independent Woman Director on the board of PMS-Karvy on June 30, 2015.*

c) *Noticees 2 and 3 submitted that they do not hold any shares either in PMS-Karvy or any of its group/ associate companies. They are not related to the promoters/directors of PMS-Karvy. They do not have any kind of material/pecuniary relationship as director with PMS-Karvy, its promoters,* *directors, Senior Management or its subsidiaries and associates, which may affect their independence as directors.*

d) *Their role as Independent Directors is very limited and restricted. They are not involved in day to day management and affairs of PMS-Karvy. Same were, in fact, been handled and managed by the Senior Management, the Compliance Officer along with their team of officials and the Operational team.*
e) *While levelling the allegations in the SCN, it has been ignored and overlooked that Independent Directors are not involved in day to day management and affairs of the company. In the board meetings, broad policy decisions are taken and the actual implementation at operational level is done by senior management/operational teams.*
f) *The alleged breaches, admittedly, pertain to the activities which are in the realm of day-to-day operations of PMS-Karvy and relate to compliances to be made by Compliance/Operational teams. The said activities fall within the domain of Whole Time/Executive Directors and/or Compliance/Operational teams. It is submitted that the Compliance/Operational activities of PMS-Karvy, is not something which passes through the board members of PMS-Karvy or is placed for approval in the Board meetings of PMS-Karvy .Same are routine operational/business activities of PMS Karvy and the Independent directors do not get involved in the same. Allegations in the SCN completely ignore and overlook the said position.*
g) *Appointment of Principal officer not made as per PMS Regulations – The said appointment did not require approval of the board. The appointment of Principal Officer (as alleged in the SCN) was never placed before the Board, for Noticees' 2 or 3 approval and they had no knowledge of the same.*
h) *Contrary provisions in disclosure document – The disclosure document is to be prepared by the Compliance/Operational team (under the guidance of the Whole Time Directors) and they have to ensure that all the requisite disclosures are made in consonance with applicable regulatory regime. The disclosure*

document was never placed before the Board, for Noticees' 2 or 3 approval and they had no knowledge of the same.

i) *Provision of outsourcing of core activities in Model Portfolio Management Agreement - The said Agreement is to be prepared by the Compliance/Operational team (under the guidance of the Whole Time Directors) and they have to ensure that all the provisions contained therein are in consonance with applicable regulatory regime. The said agreement was never placed before the Board, for Noticees' 2 or 3 approval and they had no knowledge of the same.*

j) *Failure to maintain uniformity in provisions for termination of agreement with clients - The said Agreement is to be prepared by the Compliance/Operational team (under the guidance of the Whole Time Directors) and they have to ensure that all the provisions contained therein are in consonance with applicable regulatory regime. The said agreement was never placed before the Board, for Noticees' 2 or 3 approval and they had no knowledge of the same.*

k) *Failure to provide certain details in Disclosure document - The said Agreement is to be prepared by the Compliance/Operational team (under the guidance of the Whole Time Directors) and they have to ensure that all the provisions contained therein are in consonance with applicable regulatory regime. The said agreement was never placed before the Board, for Noticees' 2 or 3 approval and they had no knowledge of the same.*

l) *Open positions in respect of allocation of purchase of securities effected in a day – Same is to be ensured by the Compliance/Operational team (under the guidance of the Whole Time Directors) and they have to ensure that all the provisions contained therein are in consonance with applicable regulatory regime. The said agreement was never placed before the Board, for Noticees' 2 or 3 approval and they had no knowledge of the same.*

m) *Non rectification of deficiencies mentioned in Auditors report - during the meetings, the Whole Time Directors had assured that the observations of the Auditors would be looked into and appropriately attended to and taken care of* *by the Compliance officer and Operational team. Here it may be appreciated that the alleged differences-which are minimal and involve insignificant amount vis-à-vis the total amounts handled by PMS-Karvy, have arisen, due to operational reasons viz non identification of the individual clients. Based on said alleged differences, no adverse inferences against him as an Independent Director can be drawn.*

n) *Failure to appoint appropriate Compliance Officer - Independent Directors have no role to play in the said appointment. Same is being handled and managed by the Whole Time Directors. Further, said appointment does not require approval of the board.*

o) *Failure to maintain and provide proper information of redressal of complaints - Independent Director have no role to play in the maintenance of proper information of redressal of complaints. It is the job of Compliance / Operational team. In any case such issued were never placed before the Board and they had no knowledge of the alleged non-maintenance of proper information pertaining to redressal of complaints.*

p) *The alleged breaches are nothing but routine violations arising from day to day operations of PMS activity by PMS-Karvy, involving Whole-Time/Executive Directors and their Compliance/Operational teams . Same had no involvement of Independent Directors. Even there is nothing in the SCN to remotely indicate my involvement in the alleged violations committed by PMS-Karvy . Therefore, Noticees 2 and 3 cannot be, as an independent director, saddled with the alleged acts of PMS-Karvy in which they had no role to play.*

q) *Noticees 2 and 3 referred to provisions of section 149(12) of Companies Act, 2013, General Circular No 1/2020 F No 16/1/2020 - Legal, dated March 2, 2020 GOI Ministry of Corporate Affairs and quoted from various case laws including judgement of Hon'ble SAT in the case of Dr. Venkadasamy Venkataramanujan Vs SEBI (Appeal No. 254 of 2019) dated February 07, 2020 ; Sayanti Sen (Appeal No. 163 of 2018) dated August 09, 2019 and also from judgements of Hon'ble Delhi High Court in the matter of Kanarath Payattiyath Balraj Vs. Raja*

Arora And ors. 2017 SCC Online Del 7416; Har Sarup Bhasin Vs. Origo Commodities India Pvt. Ltd.

r) *With regard to submissions sought by the undersigned during the hearing, Noticees 2 and 3 submitted minutes of the following relevant board meetings of KSBL held during the relevant period i.e. the Inspection Period and thereafter (from September 2018 to September 2019) viz. Board Meeting held on 21.09.2018, 06.11.2018, 04.12.2018, 30.01.2019, 02.05.2019, 8.8.2019, 28.09.2019 & 29.09.2019.*

s) *It was submitted that during the meetings held on 06.11.2018 and 02.05.2019, wherein the Audit observations were placed before the Board, the Whole Time Directors had assured the Board that the observations of the Auditors would be looked into and appropriately attended to and taken care of by the Compliance Officer and Operational team. Therefore, based on qualification by the Auditors in the report, no adverse inferences against Noticee 2 and 3 as Independent Director can be drawn.*

t) *With regard to the query regarding investor complaints there was a specific observation in the Internal Audit Report that timely and prompt actions are taken in respect of all the complaints received in respect of PMS Operations and there are no reportable instances during the audit period. From the aforesaid, it would be evident that there are no investor complaints during the Audit period and no reportable instances of investor complaints were also observed during the audit period. Without prejudice, it is submitted that Noticees 2 and 3 as Independent Directors have no role to play in the redressal of complaints. The same is the job of the Compliance/Operational team. Therefore, based on the failure of redressal of investor complaints, if any, no adverse inferences against me as an Independent Director can be drawn.*

u) *It is submitted that Noticees 2 and 3 as Independent Directors had no role to play in the appointment of Principal Officer and Compliance Officer. From the minutes of the meetings during the relevant time, it would be evident that in the Board meetings held during the inspection, the appointment of Mr. Vikas Rajpal* *as Principal Officer and Compliance Officer was not a part of the meeting agenda, was never discussed in any of the Board Meetings and was never placed before the Board for Noticees' 2 and 3 approval, therefore, they had no knowledge of the same. Since it was not tabled for discussion, the question of whether they exercised due diligence on the said appointment cannot and does not arise. The appointments of Principal Officer and Compliance Officer were being handled and managed by the Whole-Time/Executive Directors, and they were responsible for scrutinizing the qualifications of the Mr. Vikas Rajpal as Principal Officer and Compliance Officer, while engaging them and ensuring that same were in conformity with PMS Regulations. Therefore, no adverse inferences against me, as an Independent Director, can be drawn based on the said appointment.*

13) The submissions made by Noticee 4 are as summarized below:

a) *Noticee 4's inclusion as a noticee in these proceedings is unsustainable and bad in law in as much as the allegations being pressed against me are being done for no reason other than the fact that I was a director of the KSBL, with KSBL being accused of violating operational and regulatory requirements under the PM Regulations. The role of a director in compliance with such requirements is not spelt out and how through participation in Board processes, he was involved in any violation or had knowledge of violations is not at all spelt out.*

b) *Noticee 4 was appointed as a director of KSBL as a nominee of a reputed global private equity fund that was a financial investor in KSBL. As a nominee director, he was appointed only to factor in the interests of the financial investor in KSBL and indeed play the role of a director of KSBL under company law, but by no stretch did that role entail any executive or operational facet of KSBL's operations. He played this role between June 29, 2011 and July 14, 2019. In support of his submissions, Noticee 4 provided a copy of letter dated June 14, 2010, in which Baring PE Asia advised PMS-Karvy to appoint Noticee 4 as its* *nominated director. It was also mentioned in disclosures in Board of directors for FY 2018-19 that Noticee 4, a non-executive director, resigned on July 14, 2019.*

c) *As such, as a non-executive nominee director of KSBL, he was not in charge of the day to day affairs of KSBL, including but not limited to KSBL's portfolio management business. He was not drawing any salary or remuneration from KSBL in any executive capacity. As a director, he was paid a sitting fee for the limited number of board meetings of KSBL that he actually was able to attend. Post his resignation, he have not been involved with KSBL in any capacity.*

d) *With specific reference to my tenure as director during the Investigation Period i.e., April 01, 2018 to March 31, 2019, the financial investor, for whom he was appointed as a nominee director, was negotiating sale of its stake in KSBL. A Share Purchase Agreement ("SPA") came to be executed in and around December 2018. Upon execution of the SPA, his attendance of Board Meetings of KSBL was further reduced. In July 2019, his tenure as a director came to an end. Eventually, the financial investor also exited KSBL. Noticee 4 also submitted a copy of diclosures in Board of Directors Report in which it was disclosed that Noticee 4 attended only one out of seven board meetings in the FY 2018-19*

e) *It is a settled position of law, upheld by the Hon'ble Supreme Court and reiterated by the Hon'ble Securities Appellate Tribunal, that a person cannot be held liable for any act or omission of a company, merely because he/she was a director of the company and that when a company is an offender, vicarious liability of the directors cannot be imputed directly. It is also now codified in both the Companies Act, 2013 ("Companies Act") and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") that the role of a director ought to be considered purely from the standpoint of involvement, connivance and knowledge that is discernible from participation in Board processes.*

f) The Ministry of Corporate Affairs (MCA) has also, vide its circular (General Circular No. 1/ 2020, bearing ref. no. F. No. 16/1/20202 - Legal) dated March 02, 2020, clarified that the liability of independent directors or non-executive directors would only be in respect of such acts or omissions by a company which had occurred with their knowledge, and with their consent or connivance or where such director has not acted diligently. Earlier, the MCA vide circular issued in 2011 had stipulated the same standard. Such standard found its way into codification into the Companies Act in Section 149(12), whereby the metric and standard for determining director's liability for violation was evidently one of connivance or knowledge discernible through participation in Board processes. Such a standard was also codified in the LODR Regulations in 2015

g) There is no material brought on record, including any board minutes/ resolutions passed by KSBL to evidence that Noticee 4 was involved/ or have approved the appointment of Noticee No. 5 as the principal officer/ compliance officer of KSBL. Further, I am not aware of the circumstances under which these appointments were made/ not made.

h) In terms of Schedule V read with Regulation 14 of the PM Regulations, the disclosure document is required to be signed by at least two directors of the portfolio manager. The disclosure document dated February 18, 2019 (annexed as Annexure 3 to the SCN) has not been signed by Noticee 4. Thus, evidently, he cannot be held responsible/liable for any purportedly contrary provisions recorded in the disclosure document.

i) The organisation chart of its PMS business, as provided by KSBL (Annexure 2.1 to the SCN) clearly sets out the individuals who were responsible for the PMS business of KSBL. Noticee 4's name does not feature in this chart. Admittedly, it was the principal officer who was responsible for compliance of KSBL's PMS business. Furthermore, all officers directly reported to the Chairman and Managing Director of KSBL, who was responsible for the PMS business. In the face of such categorical chain of command set out by KSBL itself, there is no room to suggest that Noticee 4 was involved in the affairs of

KSBL's PMS business or responsible for compliance requirements under the PM Regulations. Accordingly, such a charge, brought solely on the ground that I was a director of KSBL, cannot be established and must necessarily fail.

j) *Noticee 4 also referred to and quoted various case laws including Hon'ble Supreme Court in Sunil Bharti Mittal vs. Central Bureau of Investigation & Ors. in Criminal Appeal No. 35 of 2015 and Sham Sunder and Ors. v. State of Haryana, (1989) 4 SCC 630.*

14) Submissions made by Noticee 5 vide letter dated June 22, 2022 and August 17, 2022 are as summarized below:

a) *He was appointed as a Non-Executive Director of KSBL on 30th March 1995.Since then, my association with the Company has been limited to being a Non Executive Director, not involved in the Day to Day affairs of the company.*
b) *As a Non Executive Director, he had no connection with the day-to-day functioning of the Company and had no role in the operations of KSBL and no knowledge whatsoever about the manner in which KSBL carries out its operations. In fact, I became aware about the allegations in the SCN about PMS operations only on receipt of the SCN.*
c) *His role as a Non-Executive Director of KSBL was limited and primarily comprises of attending the meetings of the Board. Further, he was only privy to the information that was placed before the Board during the meetings. During the FY 2018 -19, due to his ill health, he attended only 3 meetings of the total 7 meetings held by the Board of KSBL. This is evidenced by the Minutes of Board Meetings dated 13th June 2018 (attended), 21 July 2018, 24th August 2018, 21 September 2018 (attended), 8th November 2018, 4th December 2018 and 30th January 2019 (attended). His attendance was wrongly recorded in the minutes dated 4th December 2018 and a copy of the said Minutes reveal that he has corrected the error by hand and have made multiple oral requests for the Minutes of 4th December 2018 to be rectified to mark my absence. Copies of these Minutes are annexed hereto as Annexure "II".*

d) The fact that he was not in charge of the day to day affairs of the Company is also evident from the forensic audit report dated 9th January 2020 prepared by Ernst & Young on the affairs of KSBL. The said report highlights the details of Key Employees of the Company and the reporting structure. A perusal of the same reveals, that my name is not included in the list of Key Employees with control over day to day operations at KSBL. A copy of the extract of the said Forensic Audit report is annexed hereto as Annexure-"Ill"

e) After suspecting wrongdoing and lapses at KSBL, even as a Non-Executive Director he wrote to the management of KSBL even before the SEBI order in November 2019 ("SEBI Order") and subsequent to the SEBI order, seeking forensic audits and details of borrowings of KSBL. Over the last two years, he has also written multiple letters to the regulators (ROC, SEFIO and RBI), including SEBI flagging the lapses at KSBL and requesting appropriate regulatory action.

f) The SCN is issued in relation to violations of the Regulations which are strictly procedural in nature and in his capacity as a Non Executive Director. He has no role in their implementation or resolving any issues pertaining to the PMS Regulations. The fact that he was merely a Non-Executive Director of KSBL is evident from the filings of KSBL with ROC for the years FY 2016- 17, 2017- 18, 2018 - 19, 2019 - 20 and the minutes of meetings of the Board of KSBL. The regulatory filings of KSBL with ROC also specify that I have only received sitting fees for attending the meetings of the Board and did not receive any other remuneration from KSBL. This is proof that my role in KSBL was merely that of a Non-Executive Director.

g) The acts complained of in the SCN occurred without his knowledge and were not attributable to the Board process.It is pertinent to note that the management of the KSBL has not given any intimation or notice to him about the lapses with KSBL's PMS Regulation compliance. Noticee 5, as a Non Executive Director had specifically not consented to any of acts/decisions committed/taken by the KSBL regarding PMS Operations.

h) It is settled law that a Non-Executive Director is not responsible for the Company's operations and day-to-day affairs except the matters which are placed before the Board of directors and which were approved by the Board. None of the matters related to the PMS operations and complied with the PMS Regulations were brought before the Board of directors by the Managing Director. The Managing Director has also admitted that he alone was responsible for the operations of KSBL. Therefore, the averments of lapses of PMS Regulations against Noticee 5 in the SCN are incorrect as he is neither in charge of day to day functioning and operations of KSBL nor its conduct with regard to PMS Regulations.

i) Noticee 5 relied upon and quoted from the judgements of Hon'ble Supreme Court in Chintalapati Srinivasa Raju v. SEBI, (2018) 7 SCC 443 and Pooja Ravinder Devidasani v. State of Maharashtra,(2014)16 SCC 1.

j) Section 27 of the SEBI Act dealing with offences by companies is similar to the provisions of Section 141 of the Negotiable Instruments Act discussed above. The Hon'ble SAT in Sayanti Sen v. Securities and Exchange Board of India, 2019 SCC On Line SAT 132, examined Section 27 of the SEBI Act, 1992 and noted that an officer is deemed guilty of an offence by a company if he was in charge of and responsible to the company and that the proviso to Section 27(1) provides that liability shall not apply to a person who can prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.SAT held that, applying the spirit of Section 27, if there is a finding that the officers had nothing to do with the day-to-day affairs of the company, they should not be held guilty. This is consistent with the interpretation of similar provisions in various other statutes in relation to offences by companies, as held by the Supreme Court in various decisions cited above.

k) The SCN does not contain any specific averments against Noticee 5's role in KSBL's lapses of complying with PMS Regulations.

l) Further, the only issues pertaining to PMS operations that were ever placed before the Board for the period specified in the SCN were the performance report of PMS, investor grievances (only once instance), internal audit report of Jain and Jain, Bombay in regard to PMS. It is noteworthy that there was only one instance where a customer grievance was placed before the Board and even the audit report of Jain and Jain did not identify any issues with PMS operations of KSBL. Therefore, Noticee 5's knowledge is limited to what was placed before the Board and he should not be held responsible for the lapses on account of and wholly attributable to the CMD and other key managerial personnel of the Company.

m) KSBL has never given him information about the day-to-day operations despite multiple requests' prior to and after the SEBI ban orders.

n) Noticee 5 has been cooperating with the investigations of the Central Crime Station, Hyderabad and with the Economic Offences Wing, Cyberabad. After their investigation, the Hyderabad police station has ascertained that he had no role in the affairs of the said Company. In view thereof: he has not been named in the charge-sheet as accused. He has also cooperated with the ED in its investigation into the affairs of KSBL and the ED has only named the CMD in its chargesheet for illegally transferring the loan amounts raised by pledging client shares.

o) With reference to paragraph nos.4 and 5 in the SCN ,the contents thereof are denied for want of knowledge. As elaborated hereinabove, Noticee 5 in his capacity as non- executive director was not privy to any of the decisions made by the Key Managerial Persons. Furthermore, due to his consistent concerns and demands for more transparency in the affairs of the company, my limited access to the affairs of the Company was further and he was not privy to the decisions made by the CMD including appointment of the Principal Officer in terms of the PMS Regulations.

p) With reference to paragraph nos. 5- 8, the contents thereof are denied for want of knowledge. It is clarified that the response from the Company and the *admissions therein cannot be attributable to the Noticee 5. He has been involved in the disputes with the erstwhile management of the Company and as stated hereinabove, he has made every attempt to expose the irregularities in the Company. In view thereof, he cannot be held liable for the offences committed by the Company neither can it be said that the response issued by the company is to include his response.*

q) *With reference to paragraph nos.9-16, the contents thereof are denied as far as they make allegations against Noticee 5. He is not privy to the Company's response to the SCN Notice which seem to be subsequent to SEBI's interim ban order. As demonstrated hereinabove, Noticee 5 has questioned the CMD about the lapses and issues flagged by the SEBI Order. Pursuant thereto, the CMD has ensured that Noticee 5 is kept at a distance from the Company's affairs. In view thereof, Noticee 5 was not aware of the contradictions and violations of the PMS Regulations as the same pertain to the day to day affairs of the Company.*

r) *With reference to paragraph nos. 17-18, the contents thereof are denied for want of knowledge.*

s) *With reference to paragraph nos.19-20, the contents thereof are denied as far as they pertain to Noticee 5. As stated hereinabove, he has been seeking a forensic audit and the appointment of an independent auditor since 2019, even prior to any action taken by SEBI. The emails dated 18th September 2019, 15th December 2019,15th February 2020 and 22nd April 2020 addressed by the Noticee 5 were not responded to and the request was never met. In fact, he only received the Forensic Audit Report of the Company in May 2022 from SEBI. In view thereof any allegation that Noticee 5 was in any manner responsible for the deficiency in the Audit Reports of the Company is unfounded and cannot be sustained as against him.*

t) *With reference to paragraph nos.21-22, the contents thereof are denied as far as they pertain to Noticee 5. He was not in charge of the day to day functioning of the Company and in fact was kept away from the same. In his capacity as*

Non- Executive Director, he was only concerned with the affairs of the Board, however as the facts and documents hereinabove demonstrate, the CMD and other key managerial personnel of the Company were actively concealing facts from him and other members of the Board.

u) *With reference to paragraph nos.23-25 the contents thereof are denied as far as they allege offences and knowledge to Noticee 5.*

v) *Vide letter dated August 17, 2022, Noticee 5 submitted that Board meetings during FY 2018-19 were held on June 13, 2018, July 21, 2018, August 24, 2018, September 21, 2018, November 6, 2018, December 4, 2018 and January 30, 2019. He submitted that he was present only in the meetings held on June 13, 2018, September 21, 2018, December 04, 2018 and January 30, 2019.*

w) *As regards to the query that whether irregularities alleged in the SCN by the Company were brought to the notice of audit committee, Noticee 5 submitted that he has written multiple emails to the Mr. B.D.Narang, Chairman of the audit committee and the other Independent Director after SEBI's orders. It was only through the orders of SEBI that he and the rest of the Board was made aware of KSBL violations including pledging fully paid client shares. Noticee 5 submitted copies of emails sent by him to Mr. B D Narang. It was further submitted that his attempt to seek information from key managerial personnel was once again denied by the CMD vide its email dated 2nd March 2020. In fact, vide email dated 14th March 2020 the CMD has reiterated that only the Key managerial personnel are responsible for day-to-day affairs of the company. This is proof that despite his attempts to highlight the wrongdoing in the Company vide several correspondences issued to the Board of Directors, his requests were ignored.*

x) *Vide mail dated November 09, 2022, Noticee 5 submitted a copy of SEBI AO Order dated August 30, 2022 in the matter of Landmark Capital Advisors Private Limited for consideration.*

15) The submissions made by Noticee 6 are summarized hereunder:

a) *I had been hired by Karvy Stock Broking Limited (KSBL) to join on 3rd December 2018, as a Research Analyst to generate stock ideas for their Equity PMS Fund (offer letter attached in the mail for your reference). My internal designation at the company was that of Manager, which is mentioned in the offer letter, as well as in my Relieving Letter (attached in the mail for your reference). Prior to joining KSBL, my experience throughout has been as a Research Analyst on both sell-side and buy-side. I am a NiSM Series XV certified research analyst (certificate attached in the mail for your reference).*

b) *A few months after I joined the company, I was asked to also take responsibilities of Compliance Officer and Principal Officer, until new personnel were hired for these roles. I had never applied for these roles and the organisation was aware of my all qualifications and experiences. It was possible that the organisation would have known the prerequisites required for a Compliance Officer and a Principal Officer, despite which a board resolution was passed to appoint me as a Compliance Officer and a Principal Officer (board resolution attached in the mail for your reference). I was not asked for any further documents before nomination and hence, I took the whole situation as a normal course of business and tried to help the organisation with additional responsibilities in the interim. Since the KSBL PMS setup was small, it was my understanding that a single person could take up multiple roles to support various organisational functions.*

c) *In the additional roles, in the interim, I tried to service the organisation in the guidance of seniors. Today after the issues brought to my notice and after consultations, I can say this "Since I had no experience and very limited knowledge/understanding of the additional positions bestowed on me, I agree that I may have not done justice to the role". However, at that point, I had no way of knowing, whether I was doing the right thing as my focus was my Research Analyst job, for which I was recruited and additional work, I was delivering under guidance of seniors. Throughout my tenure as a Research*

Analyst which I was originally hired for, I have put my best foot forward and worked dedicatedly. I have worked in the best interest for the clients that we used to handle under the PMS, as a Research Analyst and have worked in accordance with all guidelines and regulations required for that role.

d) *I would again like to reiterate that, I was told that the positions which I will have to additionally hold will be interim in nature. However, I had to continue with the positions till I departed from the organisation, as no one was hired neither as Compliance Officer nor as Principal Officer. The company continued to use my name as a Compliance Officer even after I left the company on 6th March 2020, as I still used to get calls from their customers to resolve grievances.*

CONSIDERATION OF ISSUES AND FINDINGS

16) Considering the findings of Investigation, the allegations made out in the SCN and the submissions made by the Noticees, I find that following issues require consideration in the present case:

ISSUE I-A - Whether Noticee 1, being promoter, Chairman and Managing Director of PMS-Karvy is in violation of the provisions of Portfolio Managers Regulations, 1993 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

ISSUE I-B - Whether Noticee 6, being compliance officer of PMS-Karvy, is in violation of the provisions of Portfolio Managers Regulations, 1993 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

ISSUE I-C - Whether Noticees 2 to 5, being directors of PMS-Karvy, are in violation of the provisions of Portfolio Managers Regulations, 1993 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

ISSUE II - Do the violations, if any, attract penalty under Section 15HB of the SEBI Act, 1992?

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

17) The said provisions under which violations have been alleged against the Noticees are reproduced below –

SEBI (Portfolio Managers) Regulations, 1993

6. 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-

(c) the principal officer of the applicant has either–

(i) a professional qualification in finance, law, accountancy or business management from a university or an institution recognized by the Central Government or any State Government or a foreign university; or

(ii) an experience of at least ten years in related activities in the securities market including in a portfolio manager, stock broker or as a fund manager.

(iii) a CFA charter from the CFA Institute.

9A. Conditions of registration.

(1) Any registration granted under regulation 8 shall be subject to the following conditions, namely:-

(c) it shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received.

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

14. Contract with clients and disclosures.

(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).

15. General responsibilities of a Portfolio Manager

(2) The portfolio manager shall act in a fiduciary capacity with regard to the client's funds.

(6) The portfolio manager shall ensure proper and timely handling of complaints from his clients and take appropriate action immediately.

16. Investment of clients' moneys and management of clients' portfolio of securities

(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.

22. Report on steps taken on Auditor's report *─ Every portfolio manager shall within two months from the date of the auditors report take steps to rectify the deficiencies, made out in the auditors report.*

23A. Appointment of compliance officer ─

(1) Every portfolio manager shall 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 investors' grievances.

(2) The compliance officer shall immediately and independently report to the Board any non-compliance observed by him.

Schedule III of SEBI (Portfolio Managers) Regulations, 1993

[Regulation 13]

Code of conduct - portfolio manager

1. 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.

3. A portfolio manager shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment. The portfolio manager shall either avoid any conflict of interest in his investment or disinvestment decision, or where any conflict of interest arises, ensure fair treatment to all his customers. He shall disclose to the clients, possible source of conflict of duties and interests, while providing unbiased services. A portfolio manager shall not place his interest above those of his clients.

9. A portfolio manager shall endeavor to –

(a) ensure that the investors are provided with true and adequate information without making any misguiding or exaggerated claims and are made aware of attendant risks before any investment decision is taken by them;

(b) render the best possible advice to the client having regard to the client's needs and the environment, and his own professional skills;

(c) ensure that all professional dealings are effected in a prompt, efficient and cost effective manner.

Schedule IV of SEBI (Portfolio Managers) Regulations, 1993

[Regulation 14]

Contents of agreement between the portfolio manager and his clients

8. Maintenance of Accounts-Maintenance of accounts separately in the name of the client as are necessary to account forthe assets and any additions, income, *receipts and disbursements in connection therewith, as provided under SEBI (Portfolio Managers) Regulations, 1993.*

Schedule V of SEBI (Portfolio Managers) Regulations, 1993

[Regulation 14]

Disclosure document

MODEL DISCLOSURE DOCUMENT FOR PORTFOLIO MANAGEMENT

III. Contents of the Document

4) 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.

SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011

5. 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.*

SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010

3. In order to bring about greater uniformity, clarity and transparency with regard to above issues, portfolio managers are advised to ensure the following;

b) To ensure compliance with regulation 14(2)(b)(iv) of SEBI (Portfolio Managers) Regulations, 1993, Portfolio Managers shall disclose the performance of portfolios grouped by investment category for the past three years as per the enclosed prescribed tabular format. Portfolio Managers shall also ensure that the disclosure document is given to all clients along with the account opening form at least two days in advance of signing of the agreement. In order to ensure that the clients have access to updated information about the portfolio manager, portfolio managers shall place the latest disclosure document on their website, wherever possible.

ISSUE I-A - Whether Noticee 1, being promoter, Chairman and Managing Director of PMS-Karvy is in violation of the provisions of Portfolio Managers Regulations, 1993 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

ISSUE I-B - Whether Noticee 6, being compliance officer of PMS-Karvy, is in violation of the provisions of Portfolio Managers Regulations, 1993 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

18) I will now proceed with my findings in each of the alleged violations against Noticees 1 and 6 in the SCN dated January 24, 2022.

19) **Appointment of Principal Officer**

a) It has been alleged that the PMS-Karvy has failed to appoint appropriately qualified or experienced Principal Officer. Hence, Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being compliance officer of PMS-Karvy was alleged to have violated provisions of regulation 6(2)(c) of Portfolio Managers Regulations, 1993.

b) Regulation 6(2)(c) of Portfolio Managers Regulations, 1993 requires the Principal Officer of a Portfolio Manager to have a professional qualification in finance, law, accountancy or business management from a university or an institution recognized by the Central Government or any State Government or a foreign university; or an experience of at least ten years in related activities in the securities market including in a portfolio manager, stock broker or as a fund manager; a CFA charter from the CFA Institute.

c) It was observed that Mr. Vikas Rajpal (Noticee 6), who was appointed as Principal Officer and Compliance Officer of PMS-Karvy with effect from April 16, 2019 was qualified as B.Tech in Chemical Engineering, and was pursuing MBA. He was having experience of around 7.5 years as portfolio manager, investment advisor and fund manager. He also had certification from NISM Series XV Certified Research Analyst. Thus, he was not adequately qualified or experienced for being designated/ appointed as Principal Officer, in terms of Regulation 6(2)(c) of Portfolio Managers Regulations, 1993.

d) I note that Noticee 1 has accepted that Noticee 6 was appointed as Principal Officer with effect from April 16, 2019, even though he was not appropriately qualified or experienced in terms of regulation 6(2)(c) of Portfolio Managers Regulations, 1993 prevailing at the time of appointment. Noticee 1 has stated that in absence of a qualified or experienced person available, Noticee 6 was given the position of Principal Officer in the interest of investors as a temporary arrangement, and that Mr. Sachin Mittal was appointed as Principal Officer in June, 2020 subsequently, who was duly qualified and experienced for the position.

e) Noticee 6 submitted that he did not apply for the roles of compliance and principal officer and he believed that a person can take multiple roles to support various organization functions. He further submitted that he was told that the positions which were allocated to him were interim in nature.

f) I note that Mr. Sachin Mittal, being appropriately qualified and experienced Principal Officer was appointed after a period of more than 13 months of appointment of Mr. Vikas Rajpal as Principal Officer, which is quite a long time duration to call it a temporary arrangement in the interest of investors. The Regulation states categorically about the qualification and experience of the Principal Officer and that needs to be maintained throughout the life of any PMS. The Regulations do not give any leeway for temporary arrangement. This provision is made categorically to ensure that PMS as a registered intermediary caters to the need of the investors and in the best interest of the securities market through a qualified and/ or experienced Principal Officer, who with adequate qualification and experience will be in the best position to handle the matters pertaining to the clients of PMS efficiently.

g) Noticee 6 was Principal and Compliance officer of PMS-Karvy and it was his responsibility for monitoring the compliance of SEBI Act, 1992 and all applicable rules and regulations thereunder.

h) In view of the above, it is concluded that Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being compliance officer of PMS-Karvy have violated provisions of regulation 6(2)(c) of Portfolio Managers Regulations, 1993.

20) **Contrary provisions in disclosure documents**

a) It was alleged that Noticee 1 and Noticee 6 have violated the provisions of Regulation 13 of Portfolio Managers Regulations, 1993 read with Clauses 1 and 9 of Schedule III of Portfolio Managers Regulations, 1993, by making contrary provisions in Disclosure Document of PMS-Karvy.

b) Regulation 13 of the said regulations mandate a portfolio manager to abide by the code of conduct specified in Schedule III therein. Clauses 1 and 9 of Schedule III instruct a portfolio manager to observe high standards of integrity and fairness in all its dealings, and that investors and clients are given true and adequate information, without any misguiding claims and ensure that all its professional dealings are effected in a prompt, efficient and cost effective manner.

c) With regard to the placement fee, the disclosure document of PMS-Karvy, dated February 18, 2019 reads as under:

- *Section 10 – Nature of Expenses (clause (v) on Page 29) – "The Placement fee shall be deducted upfront from the Client's portfolio immediately on receiving the corpus from the client."*
- *Annexure A – Section II – Fees and Expenses pertaining to the portfolio strategies (Page 16) – "The placement fee so computed shall be completely recovered from client's portfolio within the first year of receiving corpus. The Placement fee shall be deducted from client's portfolio at end of each calendar quarter till completion of one year of receiving corpus*."

d) As can be seen from the above, both the clauses are contrary as Section 10 mentions upfront deduction of fees, whereas the clause in Annexure A – Section II mentions that fees will be deducted at end of each calendar quarter till completion of one year of receiving corpus.

e) The Disclosure Document contains the quantum and manner of payment of fees payable by the client for each activity, portfolio risks, complete disclosures in respect of transactions with related parties, the performance of the portfolio manager and the audited financial statements of the portfolio manager for the immediately preceding three years. Both the parties, the client and the portfolio manager are bound by this document and the terms and conditions mentioned therein. This makes it a very important document for the purpose of providing portfolio management services.

f) Noticee 1 has stated that it was an error of inadvertence. Noticee 1 submitted that while acceding to the representations of the clients, inadvertently the concomitant change was not carried out, at the relevant time, in Section 10 of the disclosure documents. Noticee 6 did not make any submissions in regard to the above allegation.

g) Negligence of PMS-Karvy in carrying out corresponding changes in other clauses of the disclosure document is untenable, especially in view of the fact that the alleged violation was continuing since 2016-17. I note that the contrary provisions were continuing to appear in the Disclosure document, even after the appointment of Noticee 6 as Principal and Compliance Officer of PMS-Karvy. Such contrary provisions do not give true and adequate information about the fees that will be charged to the clients, thus defeating the purpose for which disclosure document is required to be made in adherence with Portfolio Managers Regulations, 1993. PMS-Karvy was expected to observe high standards of integrity and fairness.

h) In view of the above, I find that Noticee 1, being chairman and managing director of PMS-Karvy, and involved in day to day affairs of PMS-Karvy and Noticee 6, being the Principal Officer and Compliance Officer of PMS-Karvy, and responsible for compliance of provisions of SEBI Act, 1992 and all applicable rules and regulations, have violated the provisions of regulation 13 of Portfolio Managers Regulations, 1993 read with clauses 1 and 9 of Schedule III of Portfolio Managers Regulations, 1993.

21) **Provision of outsourcing of core activities in Model Portfolio Management Agreement**

a) It was observed during inspection that Clause 2.18 of the Model Portfolio Management Agreement states that *"For the purpose of discharging any of the duties, obligations and functions (whether under this agreement or under the 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 authorized 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 fee/ consultancy charges that may be charged to the client's account."*

b) The above clause includes outsourcing of core activities of PMS-Karvy. By making such provision in the model agreement, it was alleged that Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being compliance officer have not observed high standards of integrity and fairness in all its dealings with its clients and have violated the provisions of Regulation 13 of Portfolio Managers Regulations, 1993 read with Clauses 1 of Schedule III (Code of Conduct) of Portfolio Managers Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011

c) In terms of SEBI CIRCULAR CIR/MIRSD/24/2011 dated December 15, 2011, the intermediaries desirous of outsourcing their activities shall not, however, outsource their core business activities and compliance functions.

d) Noticee 1 has submitted that PMS-Karvy has never outsourced its core functions and the instant clause was purposed to outsource only routine and incidental operational activities like interacting with other intermediaries such as brokers. Noticee 1 has also stated that inspection report of SEBI in this matter clearly states that core activities have not been outsourced as on date of inspection, which shows that the PMS-Karvy did not intend to misuse the clause. Noticee 6 did not make any submissions in regard to the above allegation.

e) 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 SEBI (Portfolio Managers) Regulations, 1993. Hence, the document shall be clear and explicit in its wordings.

f) I find that Regulation does not allow PMS to outsource any of its core activities. While PMS-Karvy did not outsource its core activities, yet its document mentioned about outsourcing any of its activities. It is observed that clause 2.18 in the said agreement allows PMS-Karvy "*to delegate the performance of its duties, discretions, obligations, any of powers and authorities here under"* and thus, it allows PMS-Karvy to outsource its core activities. Though PMS-Karvy did not outsource its core activities, keeping such provision in the agreement allows PMS-Karvy to do so which is against the integrity and fairness on part of PMS-Karvy.

g) I note that the aforesaid clause allowing PMS-Karvy "*to delegate the performance of its duties, discretions, obligations, any of powers and authorities here under"* was continuing to appear in the Model Portfolio Management Agreement, even after the appointment of Noticee 6 as Principal and Compliance Officer of PMS-Karvy.

h) In view of the above, I find that Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being Principal and Compliance Officer of PMS-Karvy, were both involved in day to day affairs of the Company and have violated the provisions of Regulation 13 of Portfolio Managers

Regulations, 1993 read with Clauses 1 of Schedule III (Code of Conduct) of Portfolio Managers Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011.

22) **<u>Failure to maintain uniformity in provisions for termination of agreement with clients</u>**

a) It was alleged that Noticee 1, being chairman and managing director of PMS-Karvy and Noticee 6, being compliance officer of PMS-Karvy, have violated the provisions of Regulation 13 of Portfolio Managers Regulations, 1993 read with Clauses 1 and 3 of Schedule III of Portfolio Managers Regulations, 1993 by not maintaining uniformity in the condition of notice period mentioned in the model portfolio agreement regarding termination of agreement.

b) As per Clause 3 of Schedule III of Portfolio Managers Regulations, 1993, a portfolio manager shall render high standards of service, exercise due diligence and independent professional judgement. A portfolio manager shall ensure fair treatment to its clients and shall not place his interest above those of his clients.

c) It was observed that Clauses 12.4 and 12.5 of the Model Portfolio Management Agreement of PMS-Karvy state as under:
Clause 12.4 – "The portfolio manager may at any time terminate this agreement by written notice of termination to the Client."
Clause 12.5 – "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"

d) From the above, it was observed that there is no uniformity in condition of notice period regarding termination of agreement. PMS-Karvy has made provision for termination of client without specifying any time, which is alleged to be not in interest of the clients and high standards of integrity and fairness in all its dealings with clients.

e) Clause 12.4 of the Model Portfolio Management Agreement of the PMS-Karvy allows the PMS-Karvy to terminate the agreement at any time by written notice of the same to the client. However, as per clause 12.5, the client may terminate the agreement by giving not less than 30 days prior written notice to the PMS-Karvy. PMS-Karvy has made provision for termination of client without specifying any time, which is not in interest of its clients.

f) Noticee 1 submitted that it was an inadvertent error and that PMS-Karvy has never terminated or suspended any client's account immediately/ without prior notice.

g) I note that non-uniformity in the condition of notice period mentioned in the model portfolio agreement regarding termination of agreement, was continuing even after the appointment of Noticee 6 as Principal and Compliance Officer of PMS-Karvy. Noticee 6 did not make any submissions in regard to the above observation.

h) In view of the above, I find that Noticee 1, being chairman and managing director of PMS-Karvy and Noticee 6, being Principal and Compliance officer of PMS-Karvy, have violated the provisions of Regulation 13 of Portfolio Managers Regulations, 1993 read with Clauses 1 and 3 of Schedule III of Portfolio Managers Regulations, 1993.

23) **Failure to provide certain details in Disclosure Document**

a) It was observed that the latest Risk Disclosure Document dated August 29, 2019, available on website of the PMS-Karvy, i.e. www.karvypms.com, contained 54 pages. Under Section 4 of the Disclosure Document – Penalties, Pending Litigation or Proceedings, Findings of Inspection or Investigations for which action may have been taken or initiated by any Regulatory Authority, 'Annexure B' was referred for this information. However, said 'Annexure B' was not found to be provided with the Disclosure Document on the website. It was therefore alleged that by not providing details of penalties, pending litigation or proceedings, findings of inspection or investigations for which action may have been taken or initiated by any regulatory authority, Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being compliance officer of PMS-Karvy have violated Regulation 14(2)(a) of Portfolio Managers Regulations, 1993 read with sub-clause 4, Clause III of the Model Disclosure Document for Portfolio Management in Schedule V of Portfolio Managers Regulations, 1993 and Clause 3(b) of SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010.

b) In terms of the Model Disclosure Document for Portfolio Management in Schedule V of Portfolio Managers Regulations, 1993, the Disclosure Document of a Portfolio Manager should contain details, as mentioned therein, of penalties, pending litigation or proceedings, findings of inspection or investigations for which action may have been taken or initiated by any regulatory authority. Clause 3(b) of SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010 specifically mentions to place the latest disclosure document on the website of the portfolio manager.

c) Noticee 1 submitted that there was annexure B of 54 pages which included all the details of penalties, pending litigation or proceedings, findings of inspection or investigations for which action may have been taken or initiated by any regulatory authority. That the same was transparently disclosed to all its clients. Noticee 6 did not make any submissions in regard to the above allegation.

d) I find that Noticee 1 has not demonstrated and countered the fact that it was not present on PMS-Karvy's website at the time of inspection, which is the allegation.

e) Clause 3(b) of SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010 clearly requires the portfolio managers to place the latest disclosure document on their website. Even though the disclosure document was placed on PMS-Karvy's website, the Annexure 'B', which contained 54 pages of the details of penalties, pending litigation or proceedings, findings of inspection or investigations for which action may have been taken or initiated by any regulatory authority, was not present along with the disclosure document, though the annexure forms part of this document. The said provisions have been made to bring transparency in the workings of a portfolio manager.

f) I note that the Disclosure Document did not include 54 pages of Annexure B, even after the appointment of Noticee 6 as Principal and Compliance Officer of PMS-Karvy on April 16, 2019. No submission was made by Noticee 6 in his defence with regard to the above observation.

g) In view of the above, I find that Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being principal and compliance officer of PMS-Karvy have violated provisions of Regulation 14(2)(a) of Portfolio Managers Regulations, 1993 read with sub-clause 4, Clause III of the Model Disclosure Document for Portfolio Management in Schedule V of Portfolio Managers Regulations, 1993 and Clause 3(b) of SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010.

24) **<u>Open Positions in respect of allocation of purchases of securities effected in a day</u>**

a) It was alleged that Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being compliance officer of PMS-Karvy have violated the provisions of Regulation 16(5) of Portfolio Managers Regulations, 1993 by keeping open positions in respect of allocation of purchases of securities effected in a day.

b) From the transaction statement of the pool securities account of PMS-Karvy, it was observed that on many instances, the PMS-Karvy kept open positions in respect of allocation of sales or purchases effected in a day. The same has also been accepted by the PMS-Karvy in its response to inspection observations vide its email dated August 09, 2020. Noticee 6 did not make any submissions in regard to the above allegation.

c) Regulation 16(5) of Portfolio Managers Regulations, 1993 specifically requires that the portfolio manager shall not keep any open position in respect of allocation of sales or purchases effected in a day.

d) Noticee 1 submitted that during inspection period of one year, there were only two days when the violation occurred, which was unintentional and inadvertent. I find that the violation occurred on 7 days and for more than 40 scrips. PMS-Karvy cannot keep open position in any circumstances and leverage its position, thus posing risk to its clients.

e) I note that after appointment of Noticee 6 as Principal and Compliance Officer of PMS-Karvy on April 16, 2019, no instance of open positions in respect of allocation of purchases of securities effected in a day was observed. Hence, the allegation of violation of provisions of Regulation 16(5) of Portfolio Managers Regulations, 1993 is not established against Noticee 6.

f) In view of the above, I find that Noticee 1, being chairman and managing director of PMS-Karvy, have violated provisions of Regulation 16(5) of Portfolio Managers Regulations, 1993.

25) **<u>Non-rectification of deficiencies mentioned in Auditor's Report</u>**

a) It was alleged that by not rectifying the deficiencies made in the auditors' report within two months of receipt of audit report, and its failure to maintain proper trail of funds of the investors, which resulted in unreconciled bank balances, Notice 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being compliance officer of PMS-Karvy have violated provisions of Regulation 15 (2) of Portfolio Managers Regulations, 1993 read with Clause 8 of Schedule IV of Portfolio Managers Regulations, 1993 and Regulation 22 of Portfolio Managers Regulations, 1993.

b) Regulation 15(2) of Portfolio Managers Regulations, 1993 requires a portfolio manager to act in a fiduciary capacity with regard to client's funds. Regulation 22 of Portfolio Managers Regulations, 1993 requires a portfolio manager to take steps to rectify the deficiencies made out in the auditors report, within two months from the date of such report. Clause 8 of Schedule IV of Portfolio Managers Regulations, 1993 requires a portfolio manager to maintain accounts of clients as are necessary to account for clients' assets, additions, disbursements, income and receipts.

c) It was observed that certain amounts were pending un-reconciled in the pool bank account of PMS-Karvy. The said observation was also mentioned in the Internal Audit Reports for the half years ended September 30, 2018 and March 31, 2019, wherein, it was observed that on review of bank book and bank reconciliation as on March 31, 2019, there were un-reconciled bank balances in non-pool account of 5 clients and in pool accounts of 15 clients. It was also observed in the said reports that there were certain discrepancies in reconciliation of amounts due to the software 'Miles' used by PMS-Karvy.

d) Noticee 6 did not make any submissions in regard to the above allegation. However, it is noted that deficiencies mentioned in the Audit Report remained unrectified even after appointment of Noticee 6 as Principal and Compliance Officer of PMS-Karvy.

e) Noticee 1 accepted the allegation and submitted that the amounts were minimal as compared to the total amounts handled by the PMS-Karvy. It was also submitted that the differences and unreconciled items were due to operational reasons, viz. non-identification of individual clients to whom such balances pertained. Also, PMS-Karvy's banks accounts are frozen since April, 2021, because of which they were unable to take needful actions.

f) Firstly, there should not be unreconciled differences lying in the books for a long time, except for reasons beyond the control of a portfolio manager. Secondly, allegation pertains to corrective actions not been taken by the PMS-Karvy, when it was in PMS-Karvy's control to identify and settle the differences, which was not done by the PMS-Karvy in the instant case. Thirdly, Noticee 1's submission that its bank accounts are frozen since April, 2021 is not tenable, as the unreconciled balances pertain to financial year 2018-19 and the bank accounts were frozen after around 24 months of the end of the financial year and the inspection period.

g) Hence, I find that Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being Principal and Compliance officer of PMS-Karvy, have violated provisions of Regulation 15 (2) of Portfolio Managers Regulations, 1993 read with Clause 8 of Schedule IV of Portfolio Managers Regulations, 1993 and Regulation 22 of Portfolio Managers Regulations, 1993.

26) **<u>Failure to appoint appropriate Compliance Officer</u>**

a) Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being compliance officer of PMS-Karvy were alleged to have violated regulations 23A(1) and 23A(2) of Portfolio Managers Regulations, 1993, by failing to appoint appropriate compliance officer and also that the compliance officer did not immediately and independently report to SEBI the non-compliances observed by him with regard to appointment of Principal Officer.

b) Regulation 23A(1) of Portfolio Managers Regulations, 1993 is regarding appointment of compliance officer and regulation 23A(2) requires the compliance officer to immediately and independently report to the Board any non-compliance observed by him.

c) It was observed that Noticee 6 was appointed as Compliance Officer and Principal Officer of PMS-Karvy with effect from April 16, 2019. It was found that Noticee 6 was not appropriately qualified or experienced to be designated as Principal Officer.

d) SEBI PMS Regulation 23A(1) clearly states that an applicant desirous of being registered with SEBI as a portfolio Manager must appoint a Compliance officer who shall be responsible for monitoring the compliances of SEBI Act 1992, the rules and Regulations etc and also for redressal of investor grievances. Further Regulation 6(2(c) requires that a registered Portfolio Manager should appoint a Principal Officer. Thus, a registered Porfolio Manager has to appoint a Compliance Officer whose duties are spelt out in the Regulations clearly.

e) I also note that a principal officer of Portfolio Manager is responsible for the decisions made by the portfolio manager for the management and administration of the portfolio of securities or the funds of the client and also for overall supervision of the operations of portfolio manager. Thus, role of compliance officer is monitoring the compliances, whereas role of principal officer is operational, which means both cannot be assigned to the same person, as there won't be a maker-checker distinction, which is important for internal controls in the organization. For the same reason, responsibilities of Principal Officer and Compliance Officer are provided in the PMS Regulations clearly and separately. Thus, Noticee 6 should not have been appointed as Compliance officer as also Principal Officer at the same time.

f) Noticee 1 and Noticee 6 provided similar explanation for this violation, as was given for the non-compliance related to appointment of Principal Officer, which is irrelevant.

g) I find that Regulation 23A(2) requires the compliance officer to immediately and independently report to the Board any non-compliance observed by him. Thus, the onus of reporting to the Board lies with the compliance officer. Hence Regulation 23A(2) does not apply to Noticee 1. It was observed that Mr. Vikas Rajpal (Noticee 6) was appointed as Compliance Officer and Principal Officer of PMS-Karvy with effect from April 16, 2019. I note that Noticee 6, admittedly, was not appropriately qualified or experienced to be designated as Principal Officer. Also, he should not have accepted his appointment as both Principal and Compliance Officer of PMS-Karvy in the first place. Even after his appointment as Compliance Officer, it was his responsibility under regulation 23A(2) to immediately and independently report to SEBI about PMS-Karvy's non-compliance of appointing Noticee 6 as Principal and Compliance Officer, which was admittedly, not fulfilled by him. Noticee 6 has admitted that he was not aware about the aforesaid provisions and he believed that the pre-requisites for his appointment as Compliance and Principal Officer were already checked by Noticee 1, who had appointed Noticee 6 as Compliance and Principal Officer and Noticee 6 believed such appointment to be permissible as per the extant provisions of law.

h) In this regard, I note that statement made by Noticee 6 is not justified. As postulated by legal maxim "ignorantia juris non excusat", ignorance of law is no excuse and everyone is presumed to know the law of the land. A person cannot defend his illegal actions by stating that he was not aware his actions were illegal, even if he honestly believed that they were not breaking the law. Therefore, I do not find any merit in this contention of Noticee 6.

i) In view of the above, I find that Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being principal and compliance officer of PMS-Karvy have violated provisions of Regulations 23A(1) of Portfolio

Managers Regulations, 1993. Further, Noticee 6 has also violated provisions of regulation 23A(2) of the PMS Regulations, 1993.

27) **<u>Failure to maintain and provide proper information of redressal of complaints</u>**

a) It was alleged that PMS-Karvy did not redress two investor complaints within specified time period and that information in regard to complaints were not maintained in a proper way, thus Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being principal and compliance officer of PMS-Karvy, were alleged to have violated provisions of Regulation 9A(1)(c) of Portfolio Managers Regulations, 1993 read with Regulation15(6) of Portfolio Managers Regulations, 1993.

b) Regulation 9A(1)(c) of Portfolio Managers Regulations, 1993 requires Portfolio Managers to take adequate steps to redress investor grievances within one month of receipt of the complaint and keep SEBI informed about the number, nature and other particulars of the complaints received. In terms of Regulation 15(6) of Portfolio Managers Regulations, 1993, a Portfolio Manager shall ensure proper and timely handling of complaints and take appropriate action immediately.

c) It was observed that PMS-Karvy was maintaining details of redressal of complaints in excel sheets in which various details were incorrect or incomplete. It was also alleged that one complaint filed by a client, S3 Solutions Pvt. Ltd. took around seven months to resolve and another complaint filed by the same client on September 24, 2018 was still unresolved at the time of inspection.

d) Noticee 1 has submitted that both the complaints which were alleged to have been addressed after 30 days of receipt of complaints were actually redressed almost immediately, and within the period of 30 days. Material available on record includes copies of email communications with the complainant S3

Solutions Pvt. Ltd. in regard to the complaints and their redressal. I find that the complaints were redressed within time. Noticee 6 did not make any submissions in regard to the above allegation.

e) In view of the above, I find that the violation of provisions of regulation 9A(1)(c) read with Regulation15(6) of Portfolio Managers Regulations, 1993, does not stand established.

28) Therefore, I find that Noticee 1, being chairman and managing director of PMS-Karvy, and Noticee 6, being principal and compliance officer of PMS-Karvy, both being involved in day to day management of the Company, have violated following provisions:

a) Regulation 6(2)(c) of Portfolio Managers Regulations, 1993
b) Regulation 13 of Portfolio Managers Regulations, 1993 read with clauses 1 and 9 of Schedule III of Portfolio Managers Regulations, 1993
c) Regulation 13 of Portfolio Managers Regulations, 1993 read with Clauses 1 of Schedule III (Code of Conduct) of Portfolio Managers Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011
d) Regulation 13 of Portfolio Managers Regulations, 1993 read with Clauses 1 and 3 of Schedule III of Portfolio Managers Regulations, 1993
e) Regulation 14(2)(a) of Portfolio Managers Regulations, 1993 read with sub-clause 4, Clause III of the Model Disclosure Document for Portfolio Management in Schedule V of Portfolio Managers Regulations, 1993 and Clause 3(b) of SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010
f) Regulation 15 (2) of Portfolio Managers Regulations, 1993 read with Clause 8 of Schedule IV of Portfolio Managers Regulations, 1993 and Regulation 22 of Portfolio Managers Regulations, 1993
g) Regulation 23A(1) of Portfolio Managers Regulations, 1993

29) Further, Noticee 1 has also violated Regulation 16(5) of Portfolio Managers Regulations, 1993 and Noticee 6 has also violated provisions of regulation 23A(2) of the PMS Regulations, 1993.

ISSUE I-C - Whether Noticees 2 to 5, being directors of PMS-Karvy, are in violation of the provisions of Portfolio Managers Regulations, 1993 and applicable SEBI Circulars, as given in Table 1 under paragraph 2 above?

30) From the records available before me, I note that Noticee 2 was independent director; Noticee 3 was independent woman director, Noticee 4 was non-executive nominee director and Noticee 5 was non-executive director in PMS-Karvy during the inspection period. Noticees 2 and 3 have submitted that they were not involved in day to day affairs of PMS-Karvy, being non-executive and independent directors. They also submitted that no details regarding any of the violations related to appointment of Principal and Compliance officer, discrepancies in Model portfolio Agreement, Disclosure document, and regarding open positions in respect of allocation of purchase of securities effected in a day, were informed to them during board meetings or otherwise, as they were not involved in day to day operations of PMS-Karvy. With respect to the allegation of non-rectification of deficiencies mentioned in Auditor’s report, they submitted that Whole time directors had assured that the same would be looked into and appropriately attended to and taken care of by the Compliance Officer and Operational team. It was also submitted that information regarding appointment of Noticee 6 as Principal Officer was not placed before the Board, and hence they were not aware or involved in the appointment.

31) Noticee 4 submitted that he was appointed as director of PMS-Karvy as a nominee of a PE fund that was a financial investor in PMS-Karvy. He was appointed to look after interests of the financial investor in PMS-Karvy. Thus, he was not involved in day to day operations of PMS-Karvy. He also submitted that he was not present in

the chain of command set out by PMS-Karvy, and that all the officers directly reported to Chairman and Managing director (CMD).

32) Noticee 5 also submitted that he was not involved in day to day affairs of PMS-Karvy, being non-executive director. He was only privy to the information put before the Board, and no information regarding violations alleged in the SCN were put before the Board. He further submitted that no document regarding the alleged violations was placed before the audit committee, of which he was a member. He submitted that CMD, vide mail dated March 14, 2020 has reiterated that the key managerial personnel are responsible for day to day affairs of the company. Noticee 5 further submitted that he had always been diligent, being non-executive director of the company and submitted copies of various email communications with audit committee and the Company seeking information on pledging of clients' shares. Noticee 5 also submitted that he was not aware about the decision of appointment of Noticee 6 as Principal Officer of the Company.

33) Noticees 2, 3 and 4 have also referred to *Ministry of Corporate Affairs (MCA) Circular (General Circular No. 1/ 2020, bearing ref. no. F. No. 16/1/20202 - Legal) dated March 02, 2020 and provisions of section 149(12) of Companies Act, 2013 and LODR Regulations.* Further, Noticees 2, 3 and 4 also relied upon various case laws including *Hon'ble Supreme Court in Sunil Bharti Mittal vs. Central Bureau of Investigation & Ors. in Criminal Appeal No. 35 of 2015 and Sham Sunder and Ors. v. State of Haryana, (1989) 4 SCC 630.* Noticee 5 also relied upon the judgements *of Hon'ble Supreme Court in Chintalapati Srinivasa Raju v. SEBI, (2018) 7 SCC 443 and Pooja Ravinder Devidasani v. State of Maharashtra,(2014)16 SCC 1*.

34) Here, I would like to refer section 27 of the Securities and Exchange Board of India Act, 1992 which provides for the offences by companies and reads in relevant part as under:

Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

35) I also find that Noticees 2, 3 and 4 have rightly relied upon the judgment of Hon'ble Supreme Court in Sunil Bharti Mittal v. Central Bureau of Investigation dated January 09, 2015, wherein Hon'ble Supreme Court inter alia observed that

"No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

When the company is the offendor, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect."

36) I find that the above judgement squarely applies to the case of Noticee 5 too.

37) There is no material available on record to show that Noticees 2, 3, 4 and 5 were involved in active management or day to day affairs of PMS-Karvy. In view of the aforesaid, the allegations of contravention of provisions of PMS Regulations mentioned in Table 1 under paragraph 2 above, are not established against Noticees 2, 3, 4 and 5.

ISSUE II - Do the violations, if any, attract penalty under Section 15HB of the SEBI Act, 1992?

38) I note that the above violations make the Noticees 1 and 6 liable for monetary penalty. In this context, 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 had observed: "*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.*"

39) I am, therefore, of the view that it is a fit case for imposition of penalty under section 15HB of the SEBI Act, 1992, the text of which is reproduced hereunder:

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

40) While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 respectively, which read as under:

SEBI Act, 1992

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.

41) In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticees 1 and 6. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticees. Further, as per the available records, it is observed that Noticees 1 and 6 have not been penalised earlier for any violations of securities laws. However, I cannot ignore the fact that as a director of SEBI registered Intermediary, PMS-Karvy, Noticee 1 and Principal and Compliance Officer, Noticee 6, was under statutory obligation to abide by the provisions of the SEBI Act and all the applicable regulations, which it failed to do. Such disregard for the provisions of law governing the functioning of such intermediaries, calls for an appropriate penalty which should act as a deterrent.

ORDER

42) Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty upon the Noticees.

Sr. No.	Name of Noticee	Provisions violated	Penal Provisions	Penalty
1	C Parthasarthy PAN: AAFPC7617L	Regulation 6(2)(c), 13, 14(2)(a), 15(2), 16(5), 22, 23A(1) of Portfolio Managers Regulations, 1993 read with clauses 1, 3 and 9 of Schedule III of Portfolio Managers Regulations, 1993 and Clause 8 of Schedule IV of Portfolio Managers Regulations, 1993 and sub-clause 4, Clause III of the Model Disclosure Document for Portfolio Management in Schedule V of Portfolio Managers Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011 and Clause 3(b) of SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010	Section 15HB of SEBI Act, 1992	₹8,00,000/- (Rupees Eight Lakh only)
2	Mr. Vikas Rajpal PAN: BDOPR9829J	Regulation 6(2)(c), 13, 14(2)(a), 15(2), 22, 23A(1) and 23A(2) of Portfolio Managers Regulations, 1993 read with clauses 1, 3 and 9 of Schedule III of Portfolio Managers Regulations, 1993 and Clause 8 of Schedule IV of Portfolio Managers Regulations, 1993 and sub-clause 4, Clause III of the Model Disclosure Document for Portfolio Management in Schedule V of Portfolio Managers Regulations, 1993 and Clause 5 of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011 and Clause 3(b) of SEBI CIRCULAR Cir. /IMD/DF/16/2010 dated November 02, 2010		₹4,00,000/- (Rupees Four Lakh only)

43) The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through 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.

44) The aforesaid Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department - DRA-1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticees shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

45) In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

46) In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date: November 15, 2022	**BARNALI MUKHERJEE**
Place: Mumbai	**Adjudicating Officer**