BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. AS/AK/2022-23/20684

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Progressive Share Brokers Pvt. Ltd
(PAN: AACP6712H)

In the matter of Deutsche Mutual Fund
(Now known as DHFL Pramerica Mutual Fund)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had carried out an investigation to examine suspected front running of sell/buy trades of Deutsche Mutual Fund (Now known as DHFL Pramerica Mutual Fund) in the scrip of various companies by certain entities during the period September 01, 2014 and May 29, 2015 (hereinafter referred to as "Investigation Period" or **"IP"**). The investigation inter-alia found that Ms. Malati Lata Jena, who is registered with Progressive Share Brokers Pvt., Ltd., (hereinafter referred to as **"PSBPL" / "Noticee")** as a client had front run the trades of Deutsche Mutual Fund. Deutsche Mutual Fund was a SEBI Registered Mumbai Fund. (*hereinafter referred to as 'DMF'*) DMF was being managed by a Fund Manager (**'FM'**) during the Investigation period. **Father of FM** and **Mother of FM** were also instrumental in the execution of scheme investigated vide the present IR, they are referred together as **'Parents of FM'**. Mother of FM was an Authorized Person appointed by PSBPL, and was Partner of Hariom Capital Detectives. It was observed from the Client Registration form of Ms. Malati Lata Jena that in-person verification of Ms. Malati Lata Jena was done by the Father of FM, who was not a Sub-broker or Authorised Person and who was not in a capacity to carry out in-person verification of client. In view of the same, Noticee was

alleged to have violated the provisions of Clause A (2) of Schedule II read with Regulation 9 of SEBI (Stock Brokers and sub-brokers) Regulations, 1992 and SEBI circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and had appointed Shri Prasanta Mahapatra as the Adjudicating Officer vide Communiqué dated May 25, 2021. Pursuant to transfer of Shri Prasanta Mahapatra vide Communiqué dated June 07, 2022, the matter was transferred to the undersigned as the Adjudicating Officer under Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “SEBI Adjudication Rules”) to inquire into and adjudge the alleged violation of the provisions of Clause A (2) of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as “Stockbrokers Regulations”) and SEBI circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011, under Section 15HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice (hereinafter referred to as *“SCN”*) bearing ref. no. EAD-8/PM/NJMR/13013 /2021 dated June 22, 2021 was served on the Noticee under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act, 1992 for the violation alleged to have been committed by it. The Noticee vide letter dated July 5, 2021 submitted its reply, which is summarized hereunder:

    a) *We would like to submit that client Malati Lata Jena was introduced by Mother of FM, Partner of our AP - Hariom Capital Detectives.*

    b) *The In Person Verification (IPV) was done by Father of FM. Both husband and wife i.e., Parents of FM were carrying out the business of*

Sub-Brokerage as their family business. Both the members were involved in the said business on a day-to-day basis and hence the IPV in the case of Client Malati Lata Jena was done by Father of FM inadvertently.

c) *We would further like to submit that the Introducer/reference of the said client was Mother of FM and her Name, Details and Signature is duly present in the KYC form.*

4. In order to conduct an inquiry in the mater, in terms of Rule 4(3) of SEBI Adjudication Rules, the Noticee was given an opportunity of personal hearing on July 14, 2021, which was communicated vide email dated July 8, 2021. In view of the difficulties faced by all concerned due to Covid-19 pandemic, the hearing proceedings were conducted online through videoconferencing on the Webex platform. On the scheduled date of hearing i.e., July 14, 2021, the Noticee appeared through its Authorized Representative i.e., Mr. Ashok Kumar Verma, Principal officer of the Company, and reiterated the submissions made by the Noticee vide letter dated July 5, 2021. The Authorized Representative sought an additional time of 3 days to make fresh submissions which was acceded to.

5. Thereafter, the Noticee vide email dated July 16, 2021 made additional submissions, which are summarized hereunder:

a) *In this particular case of client Ms. Malati Lata Jena, at the time of In Person Verification (IPV), Parents of FM were present together. The process of IPV was carried out properly by Mother of FM.*

b) *At the time of signing on the KYC form – Verification Page, inadvertently Father of FM affixed his signature in the IPV marked area (lower side of the page) in place of the Introducer marked area (upper side of the page) and Mother of FM affixed her signature in the Introducer marked area (upper side of the page) in place of the IPV marked area (lower side of the page). The IPV was carried out by Mother of FM only. It is just that her signature was affixed in the upper area on the same page inadvertently.*

c) *At Progressive Share Brokers Pvt., Ltd., compliance is our top most priority always. We leave no stone unturned in maintaining the highest standards of compliance and work towards being better and more vigilant by the day.*

6. Pursuant to the change in Adjudicating officer vide Communiqué dated June 07, 2022, in the interest of natural justice and in terms of the Adjudication Rules, vide email/letter dated September 30, 2022 another opportunity of hearing was granted to the Noticee on October 07, 2022. However, vide email dated October 06, 2022, the Noticee waived its right to personal hearing stating the following:

   "As mentioned, we have submitted a response vide letter/email dated 05 July 2021, 15 July 2021 and 16 July 2021 and attended the hearing on 14 July 2021 through webex.

   We would request you the kindly consider our said correspondences and hearing record as our final submissions in the said matter."

7. In light of the above, I hereby proceed to decide the case on its merits, on the basis of material on record.

CONSIDERATION OF ISSUES

8. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that it had failed to exercise skill, care and diligence while conducting its business. After perusal of the material available on record, I have the following issues for consideration, viz.,

   I. *Whether the Noticee has violated the provisions of Clause A (2) of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and SEBI circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011?*

   II. *Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act?*

   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?*

ISSUE-I: Whether the Noticee has violated the provisions of Clause A (2) of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-

brokers) Regulations, 1992 and SEBI circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011?

9. I note that In-person verification (IPV), mandated by SEBI is a part of the Know Your Client (KYC) process used to establish the identity of the person. With regard to the requirement of IPV, SEBI has issued various guidelines to the stock brokers and depository participants (DPs) from time to time. However, in line with the uniformity brought out in the KYC procedure across intermediaries, SEBI vide circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011 streamlined and harmonized the IPV requirements for all the intermediaries, which are as under:

    i. It shall be mandatory for all the intermediaries addressed in this circular to carry out IPV of their clients.
    ii. …
    iii. ..
    iv. *In case of Stock brokers, their sub-brokers or Authorised Persons (appointed by the stock brokers after getting approval from the concerned Stock Exchanges in terms of SEBI circular no. MIRSD/DR-1/Cir-16/09 dated November 06, 2009 can perform the IPV.*

10. From the plain reading of the provisions of the aforementioned circular, it is well defined that in respect of the clients to be registered with the Stock Brokers, their Sub-brokers or Authorized Persons are authorized to carry out IPV of the clients.

11. The instant case is with respect of the KYC process of one of the clients of the Noticee viz., Ms. Malati Lata Jena. I note from the records that Ms. Malati Lata Jena was introduced to PSBPL by Mother of FM, who was an Authorized Person appointed by PSBPL. At the time of opening a trading account with PSBPL the age of Ms. Malati Lata Jena was 67 years 3months. However, in the instant case, it is noted that in respect of the KYC process of Ms. Malati Lata Jena, the IPV was done by Father of FM, who was neither a Sub-broker nor an Authorised Person, which is an admitted fact by the Noticee. I also note from the records that front running was observed in Ms. Malati Lata Jena's trading account, who started trading with effect from April 30, 2014 after opening of the subject trading

account. It is noted that, the subject account was used to front run the trades of Deutsche Mutual Fund.

12. Against the above backdrop, it can be seen that the Noticee had not acted with due skill, care and diligence while opening of trading account of Ms. Malati Lata Jena, which enabled the manipulators to carry out the nefarious activities by masking their identity. Such nefarious acts of manipulators and who aid and abet such manipulators by their acts, not only threatens the integrity of the market but also adversely affects the interest of investor, if such activities remain unchecked. Therefore, I am not inclined to accept the submissions of the Noticee that the error happened in the process of IPV was inadvertent. In view of the above, I conclude that the Noticee had not exercised due skill, care and diligence while conducting its business and accordingly hold that the Noticee has violated the provisions of Clause A (2) of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and SEBI circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011.

ISSUE II: Whether the Noticee is liable for monetary penalty under Section 15HB of the SEBI Act?

13. Since, it is established that the Noticee had violated the provisions of Clause A (2) of Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and SEBI circular ref. no. MIRSD/Cir-26/2011 dated December 23, 2011, the Noticee is liable for monetary penalty under Section 15HB of SEBI, the provisions of which are reproduced hereunder:

Section 15HB of SEBI Act

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?

14. While determining the quantum of monetary penalty under Section 15HB of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

    Section 15J - Factors to be taken into account by the Adjudicating Officer

    While adjudging quantum of penalty under Section 15-I, the Adjudicating Officer shall have due regard to the following factors, namely:

    (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

    (b) the amount of loss caused to an investor or group of investors as a result of the default;

    (c) the repetitive nature of the default.

15. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default.

16. However, I am of the view that the Noticee being a registered Stockbroker is expected to carry out its conduct with proper skill, care and diligence. However, it is noted that the negligence caused in the IPV process by the Noticee had defeated the purpose of establishing the identity of the person, which in the instant case, had resulted into operating such trading accounts by the market manipulators for nefarious activities, which cannot be viewed leniently. Accordingly, I deem it appropriate to impose suitable penalty on the Noticee, which acts as a deterrent to the Noticee.

ORDER

17. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose a penalty of ₹5,00,000/- (Rupees Five lakhs only) on the Noticee i.e., Progressive Share Brokers Pvt., Ltd., under Section 15HB of SEBI Act.

18. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

19. 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 favour 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

20. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	

(like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

21. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.

22. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee viz. Progressive Share Brokers Pvt Ltd and also to SEBI.

Date: October 21, 2022 **ASHA SHETTY**
Place: Mumbai **ADJUDICATING OFFICER**