

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[Adjudication Order: Order/SM/AS/2023-24/29707-29706]

Under section 15-I of the Securities and Exchange Board of India Act, 1992 read with rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry & Imposing Penalties) Rules, 1995

In respect of –
Paisabazaar Marketing & Consulting Pvt Ltd
(SEBI Regn. No.: INA100003949)
PAN- AACCE9326L

In the matter of Paisabazaar Marketing & Consulting Pvt. Ltd

1. BSE Administration and Supervision Ltd (“**BASL**”) conducted inspection of Paisabazaar Marketing & Consulting Pvt. Ltd who is a SEBI registered Investment Advisor (“**Noticee**”/ “**IA**”), on November 23, 2022 for the inspection period April 21, 2021 and August 31, 2022 and the findings of Inspection had been communicated to the Noticee *vide* email dated January 05, 2023 and January 11, 2023. Accordingly, Noticee submitted its reply *vide* letter and email dated January 13, 2023.
2. On the analysis of the findings of inspection and reply submitted by Noticee, it was observed Mr. Naveen Kukreja who was appointed as principal officer of Noticee, had not obtained the National Institute of Securities Markets (NISM) level 2 series XB certification as on 30/6/2023. Thus, it was observed that he did not have the requisite certification requirement as specified in Regulation 7(2) of IA regulations. Considering aforesaid it has been alleged that Noticee has violated Regulation 7(2) SEBI (Investment Adviser) Regulations, 2013 (“**IA regulations**”). Regulation 7(2) of IA regulations reads as:

7(2) *An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services-*

(a) from NISM; or

(b) from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM

Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:

Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.

3. Vide communiqué dated July 31, 2023, it has been informed that the competent authority in SEBI is satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as specified above w.r.t. Noticee and appointed the undersigned as Adjudicating Officer under Section 15I (1) of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire into and adjudge the aforesaid alleged violations by the Noticee under Section 15EB of the SEBI Act. The said provision of the SEBI Act read as under:

Penalty for default in case of investment adviser and research analyst.

15EB. *Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

4. A Show Cause Notice (hereinafter referred to as "**SCN**") dated August 28, 2023, was issued to Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against them and penalty, if any, should not be imposed upon them under section 15EB of the SEBI Act, for the aforesaid alleged violations by them. The aforesaid SCN send to Noticee was duly served, upon the Noticee last known address as available on records, in terms of Rule 7 of Adjudication Rules. The whole process of the present adjudication proceeding has been mentioned below in tabulated form:

Name of the Noticee	SCN	SCN delivered through	Reply dated	Hearing Concluded
Paisabazaar Marketing & Consulting Pvt. Ltd	28/08/2023	Speed post acknowledgment Due -04/09/2023	16/09/2023	26/09/2023

6. The submissions made by the Noticee in its reply are summarized below:

- 4.1. Noticee has submitted that Principal officer has now successfully obtained XB certification as on 13.09.2023 and therefore, is now full compliance with requirements under Regulation 7(2) of IA regulations. Further, Principal Officer has cleared the mandated qualification and certification by 13.09.2023 and therefore there is no continuing violation of extant regulation.
- 4.2. Noticee submitted that COVID 19 restriction made it difficult for him to ensure the compliance as mandated by IA regulations.
- 4.3. Noticee is in full compliance with IA regulations and even in past has not willfully acted in violation of any provision of IA regulations.
- 4.4. With respect to the observation regarding Ms Asmita Khurana, Noticee submitted that pursuant to the proviso of Regulation 7(1)(c)(ii) of IA regulations, any individual investment advisor has been allowed time till 3 years to comply with obligation thereunder.

6. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, reply made by the Noticee and material available on record. The issues that arise for consideration in the present case are:

Issue No I Whether Noticee is liable under 15EB of the SEBI Act?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15EB of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the Adjudication rules?

Issue No I Whether Noticee is liable under 15EB of the SEBI Act?

7. In the present case, I note from the material available before me that the SCN has only alleged that Noticee, being a registered investment advisor has employed Principal Officer (Mr. Naveen Kukreja) who was not having NISM certification¹ as on June 30/06/2023 as mandated under regulation 7(2) of IA Regulations. In the instant case it has been admitted by Noticee that its Principal Officer had only obtained the NISM level 2 series XB certification on September 13, 2023 (after the date of the SCN). Thus, I find that Noticee employed a Principal officer in contravention of regulation 7(2) which states that principal officer of a non-individual investment adviser must have at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services-(a) from NISM; or (b) from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.
8. In view of above, I find that the allegation that Noticee has violated regulation 7(2) of IA Regulations stands established.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15EB of the SEBI Act?

9. Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** [2006] 68 SCL 216 (SC) which held that- *"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..."*
10. Further, I also note that section 15EB of SEBI Act² prescribes a mandatory minimum penalty in case the violations have been established under the 15EB of SEBI Act. The

¹ NISM level 2 series XB certification

² Finance Act, 2018 w.e.f. 08-03-2019.

said amendment has come into effect from the March 08, 2019. At this stage, it is pertinent to refer the following judgment of Supreme Court:

SEBI vs Sandip Ray (dated February 13, 2023)

“Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/-is not permissible under Section 15HB of the SEBI Act, 1992.After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/-as inflicted upon noticee no.5 (Mr. Sandip Ray) and Noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/-in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of.” (emphasis supplied)

11. Considering the aforementioned judgment of Hon’ble Supreme Court and applying the same reasoning, I find there is no reason to take a different view and accordingly, considering the statutory mandate of minimum penalty and violations as established in above paras, I find that Noticee is liable to pay the penalty under section 15EB of SEBI Act for the violation of regulation 7(2) of IA Regulations.

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the Adjudication rules?

12. I note that while determining the quantum of penalty under sections 15EB of SEBI Act, I have considered factors listed in section 15J of SEBI Act read with Rule 5(2) of the Adjudication Rules which provides that factors while adjudging quantum of penalty. Further, Supreme Court in its judgment **SEBI vs Bhavesh Pabari** (2019) 18 SCC 246 held that *“We, therefore, hold and take the view that conditions stipulated in clauses*

(a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty.” Therefore, in the light of Bhavesh Pabri (Supra) judgment, submissions of Noticee viz.:

a) Principal Officer has cleared the mandated qualification and certification by 13.09.2023 and therefore, there is no continuing violation of extant regulation;

(b) With respect to the observation regarding Ms Asmita Khurana, Noticee submitted that pursuant to the proviso of Regulation 7(1)(c)(ii), any individual investment advisor has been allowed time till 3 years to comply with obligation thereunder which is not over and thus, there was no repeated default on the part of Noticee.

(c) The operation of Noticee were severely impacted by the COVID 19 pandemic during years 2020 & 2021;

can be considered as mitigating factors considering the present facts and circumstances of the case.

13. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs as well as considering the aforementioned mitigating factors, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, hereby impose a minimum penalty of **1,00,000 (Rupees One Lakh Only)** on Noticee *i.e.* Paisabazaar Marketing & Consulting Pvt Ltd. under 15EB of SEBI act.

14. I find that aforementioned penalty is commensurate with the violation committed by the Noticee as mentioned in the above paras to meet the ends of justice in the present matter.

15. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

16. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: October 30, 2023

Place: Mumbai

Soma Majumder

Adjudicating Officer