

WTM/AB/EFD/DRA1/15953/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF SEBI ACT, 1992 AND REGULATION 27(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

In Respect of –

Sr. No.	Name of the intermediary	Registration Number
1	SIC Stock and Services Pvt. Ltd.	NSE Registration No. INB231180333 BSE Registration No. INB011180339

In the matter of Mefcom Agro Industries Limited

1. The present order deals with show cause notice No. EFD/DRA4/AA/AK/OW/18960/1/2021 dated August 11, 2021 (hereinafter referred to as '**Post Enquiry SCN**') issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), under Regulation 27(1) of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as '**Intermediaries Regulations**') to **SIC Stock and Services Pvt. Ltd.** (herein after referred to as '**Noticee**'/'**SIC**') in respect of enquiry conducted against the Noticee. The Post Enquiry SCN enclosed therewith copy of enquiry report (hereinafter referred to as '**ER**') dated July 05, 2019, in respect of enquiry conducted against the Noticee by the Designated Authority (hereinafter referred to as '**DA**') under the provisions of Intermediaries Regulations in the matter of Mefcom Agro Industries Limited (hereinafter referred to as '**Mefcom**'). The Noticee was called upon to show cause as to why any action as contemplated in the Intermediaries Regulations, as deemed appropriate by the Designated Member (hereinafter referred to as '**DM**') should not be taken against the Noticee in terms of Regulation 27 of the Intermediaries Regulations.
2. Before proceeding further, it would be relevant to discuss the background of the case. I note that SEBI had conducted an investigation in the trading of the scrip

of Mefcom, for the period from January 01, 2006 to June 30, 2007. During investigation, amongst other violations, it was observed that as per shareholding details available on BSE website, the Noticee, a SEBI registered stock broker and member of BSE (at the time of alleged violations), was holding 9.99% shares of Mefcom for quarter ending June 2006. During investigation by SEBI, it was *prima facie* observed by SEBI that the broker had entered into unauthorized trades in the accounts of its client.

3. In view of the above, a DA was appointed under Regulation 24(1) of Intermediaries Regulations to inquire under Regulation 23 of Intermediaries Regulation the alleged violations of the provisions of Clause A (1), (3) and (4) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) by the Noticee for unauthorized use of client accounts. A Show Cause Notice (hereinafter referred to as “**SCN**”) dated March 05, 2018, was issued to the Noticee by the DA under Regulation 25 of the Intermediaries Regulations, *inter alia* alleging that the Noticee had indulged in unauthorized trading using its clients’ accounts and advising the Noticee to show cause within a period of 21 days from the receipt thereof, as to why further action should not be taken against it for the alleged violations of the provisions of Clause A (1), (3) and (4) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 9(f) of Stock Brokers Regulations. The SCN was duly served upon the Noticee.
4. The Noticee vide letter dated April 06, 2018, raised some preliminary objections with respect to the maintainability of the SCN and sought extension of time to file reply to the SCN, which were addressed by DA vide its letter dated April 12, 2018 and the Noticee was granted two weeks’ time to file its reply. Since, no reply was received from Noticee till May 14, 2018, DA vide letter dated May 14, 2018 again advised the Noticee to file reply to the SCN. Thereafter, the Noticee while seeking additional four weeks’ time to file merit based reply, forwarded a reply containing various judgments passed by Hon’ble Securities Appellate Tribunal (herein after referred to as “**Hon’ble SAT**”) and SEBI, which was

received by SEBI on May 18, 2018. Subsequently, vide letter dated September 18, 2018, the Noticee filed detailed reply to the SCN issued by DA.

5. The DA, in the ER dated July 05, 2019, after considering the reply dated September 18, 2018 filed by the Noticee and facts and circumstances of the case, including the lack of evidence and necessary records, recommended as follows.

“..... In view of the foregoing and after taking into consideration all the facts and circumstances of the case, amount of disproportionate gain, role of debarred entities and role of Noticee in facilitating the trades of debarred entities, in terms of the provisions of regulation 27 of the Intermediaries Regulations, no action is recommended against the Noticee under instant proceedings on grounds of lack of evidence and necessary records.....”

6. Thereafter, the Post Enquiry SCN dated August 11, 2021 came to be issued to the Noticee. The Post Enquiry SCN, was duly served upon the Noticee. Subsequently, the matter was placed before me on September 30, 2021 for granting date for personal hearing in the matter and hearing was scheduled on December 17, 2021. Vide its email/letter dated December 14, 2021, the Noticee had sought adjournment of the hearing so fixed on the grounds of processing of old records and finalizing their reply. The adjournment request of the Noticee was considered and hearing was scheduled on January 24, 2022. Vide its email dated January 21, 2022, the Noticee again sought adjournment of the said hearing citing reasons of covid pandemic, which was considered and one final opportunity was provided to the Noticee to appear for personal hearing which was scheduled on February 23, 2022. On the scheduled dated and time of hearing, Mr. Siddharth Handa, the MD and CEO of the Noticee along with one Advocate Mr. Ashok Naik, the authorized representative of the Noticee appeared and made the submissions. On request of the Noticee, two weeks' time was given to file reply cum written submissions in the matter. Accordingly, Hearing was concluded qua the Noticee. Thereafter, on March 03, 2022, the Noticee filed its reply cum written submissions.

7. In its reply dated March 03, 2022, the Noticee has, *inter alia* submitted as follows.

- i. The Noticee after providing the background of its foundation and operations has stated that it does not advise its clients in connection with the sale or purchase of securities by them. The Noticee merely executes the orders received as per the instructions of the clients without questioning the prudence of the transactions. The Noticee only earns brokerage on the transactions executed through it and nothing more.
- ii. Regarding the trading in the scrip of Mefcom, it is stated that there was no adverse information or cautionary notice about trading in the said scrip issued by the SEBI or stock exchanges nor was Mefcom in any watch list of the regulator to enable the broker to exercise more caution.
- iii. It is contended by the Noticee that there has been inordinate delay in initiation of the proceedings and the SCN has been issued after around 15 years from the alleged violation and period of investigation. In support of its contention, the Noticee had relied upon the Judgement of Hon'ble SAT in the matter of *Bharat J Patel Vs SEBI (Appeal No. 154 of 2020, decided on 08.9.2020)*, *Shriram Insight Share Brokers Ltd. Vs SEBI (Appeal No. 559 of 2020 decided on 04.01.2022)*, *Ashok Shivlal Rupani and Ors. V Securities and Exchange Board of India (Appeal No. 417 of 2018)*, *ICICI Bank Limited v SEBI (Appeal No. 583 of 2019)*, *Ashlesh Guntantbhai Shah & Ors. v SEBI (Appeal No. 169 of 2019)*, *Morepen Laboratories Ltd. (SAT Appeal No. 62 of 2020, decided on April 15, 2021)*, *Mr. Rajeev Bhanot & Ors. (SAT Appeal No. 396 of 2018, decided on July 9, 2021)* and *Garware Polyester Ltd. & Ors (Appeal Nos. 187-192 of 2021, decided on August 09, 2021)*
- iv. The Noticee had also cited Judgement of Hon'ble Supreme Court in the matter of *Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (Civil Appeal No. 11311 of 2013) decided on February 28, 2019*, wherein Hon'ble Supreme Court has observed as follows.

"..... There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc....."
- v. The Noticee has submitted that the post enquiry SCN has not agreed with findings of DA to the extent of dealings carried out by Ms. Pushpa Bansal only and it has been concluded that SIC has not dealt on behalf

of other clients as was alleged in the SCN dated 05.03.2022. In view of the same, the Noticee has filed the reply denying the allegations made with regard to trades carried out by Ms. Pushpa only and not for other clients.

- vi. As regards trades carried out by Ms. Pushpa Bansal and as alleged that SIC was operating the account of Ms. Pushpa Bansal, Noticee has submitted as under: -
 - a. Pushpa was taken on board as a client only on 12.05.2005 after carrying out due diligence process and fulfilling KYC norms as prescribed by SEBI and stock exchanges and no questions have been raised either by SEBI/ stock exchanges on the KYC mechanism of SIC.
 - b. She was also registered through the remisier Mr. KK Modi, who was the introducer. SIC was not interacting with Ms. Pushpa directly and they relied upon the prudence of the remisier Mr. Modi, who is recognized by the stock exchange.
 - c. It is further submitted that SIC is being erroneously penalized for the wrong doing of some other person. Ms. Pushpa has traded in various scrips and SIC as a broker has only executed transactions on her behalf.
 - d. Ms. Pushpa has never filed any complaint against the Noticee or with any of the authorities even when she came to know that SIC has carried out alleged unauthorized trading on her behalf.
 - e. Further, Ms. Pushpa has regularly received/ made payment which establishes that Ms Pushpa was well aware of the trading carried out in his account and he has only given the orders for trading.
 - f. In so far as the allegation that the demat account of Pushpa did not had any shares of Mefcom, it is submitted that trader who was punching their orders is no more available with us to enable us to comment upon her trading pattern.
 - g. It is submitted that non-transfer of shares to demat account of the client cannot be conclusive proof that he/ she has not given any orders/ not traded since there are number of reasons for the same viz. trading pattern of the client may be day trading or buy today sell tomorrow etc., non-payment of dues, specific instructions not to transfer the shares since on sale the client does not have to pay DP charges etc.

- h. The Noticee has also provided proof of delivery of statement of account for the following periods and copy of the relevant Bank statement highlighting payment of Rs. 24,410.80 to Ms. Pushpa Bansal.
 - i) 01.04.2005 to 31.03.2006;
 - ii) 01.04.2007 to 31.03.2008; and
 - iii) 01.04.2008 to 31.03.2009;
- vii. The Noticee has contended that it has provided the same records before the erstwhile WTM during the proceedings initiated vide the SCN dated 26.09.2017 u/s 11B of SEBI Act, 1992, which had culminated into order dated February 12, 2020 passed by Ld. WTM wherein no directions were issued against the Noticee and the SCN was disposed off.
- viii. Noticee has submitted that multiple proceedings have been initiated against it for investigation carried out in the scrip of Mefcom for the same period. The other proceedings are as follows: -
 - a) Issuance of Show Cause Notice dated 05.03.2018 under SEBI (Intermediaries) Regulation, 2008 which has culminated into SCN dated 11.08.2021. (Present proceedings)
 - b) Issuance of Show Cause Notice dated 26.09.2017 u/s 11B of SEBI Act, 1992, which has culminated into order dated February 12, 2020 passed by Ld. WTM wherein no directions were issued against us and the Show Cause Notice dated 26.09.2017 was disposed off.
 - c) Adjudication proceedings initiated against the Noticee by issuances of common Show Cause Notice dated 21.02.2018.
- ix. Noticee has submitted that the investigation period is around 15 years old and from that time their systems have improved considerably by leaps and bounds. SIC has taken a giant leap and quantum jump with the use of Technology in its day to day functioning. It has launched one mobile application which is equipped with conversational interface that lets users chat with the mobile application asking market related questions with no human intervention. This aims at assisting investors and traders with real time insights while facilitating hassle free and simplistic transaction experience. It is submitted that their systems and internal controls have improved.
- x. The Noticee has also relied upon the Judgement of Hon'ble SC in Securities and Exchanges Board of India Vs Rakhi Trading Pvt Ltd. (Civil Appeal No. 1969 of 2011), Decision of Hon'ble SAT in the matter of

Networth Stock Broking Ltd V. SEBI (decided on 19.06.2012 and SPJ Stock Brokers Pvt. Ltd. Vs SEBI (Appeal No. 52 of 2013, decided on 04.09.2013, Kapil Chatrabhuj Bhuptani Vs. SEBI (Appeal No. 95 of 2013, decided on 10.10.2013) in support of their contentions.

Consideration of submissions and findings

8. I have examined the facts of the case and the allegations against the Noticee, as mentioned in the Post Enquiry SCN dated August 11, 2021, the ER dated July 5, 2019, and the submissions made by the Noticee during the personal hearing and vide its reply dated March 03, 2022 in its defence.
9. The relevant legal provisions of the Broker Regulations as existing at that time, the contravention of which have been alleged in this case are reproduced hereunder for the purpose of reference.

“

Liability for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

Regulation 27. A stock broker or a sub-broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker or a sub-broker, as the case may be if he-

(i)...

(ii)...

...

...

(xv) commits violation of any of the provisions for which monetary penalty or other penalties could be imposed; or

...

(xvii) commits violations specified in regulation 26 which in the opinion of the Board are of a grievous nature.

Liability for monetary penalty

Regulation 26. A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely—

(i)...

(ii)...

.....

(xiii) Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.

....

(xvi) Failure to exercise due skill, care and diligence.

(xv) Failure to comply with directions issued by the Board under the Act or the regulations framed thereunder.

Regulation 9(f). The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

SCHEDULE II- Code of Conduct for Stock Brokers

A. GENERAL (1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance with Statutory Requirements: A stock broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

...”

10. I note that the Post Enquiry SCN dated August 11, 2021 called upon the Noticee to show cause as to why action as contemplated in the Intermediaries Regulations as deemed appropriate by the DM should not be taken against the Noticee in terms of Regulation 27 of the Intermediaries Regulations. I note that by the amendments made to Intermediaries Regulations on January 21, 2021, Regulation 27 which dealt with recommendations for actions which could be made by DA in case of default, has been substituted and Regulation 28 which dealt with procedure for action on receipt of the recommendation from DA, has been omitted and these matters now stand governed by the Regulations 26 and

27, respectively. In this regard, reference may be made to the judgment of Hon'ble Supreme Court in CIT, Bangalore Vs. Venkateshwara Hatcheries (P) Ltd. and Ors. (1999) 3 SCC 632 wherein it was held as under:

“.....15. As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80JJ was done simultaneously. It is a very well recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision. Viewed in this background, the effect of re-enacted provision of Section 80JJ was that profit from the business of livestock and poultry which enjoyed total exemption under Section 10(27) of the Act from assessment years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfilment of certain conditions.....”.

11. The aforesaid judgment has been quoted with approval by Hon'ble Supreme Court in its subsequent judgment in **FibreBoards (P) Ltd., Bangalore Vs. CIT, Bangalore (2015) 10 SCC 333**. In the present case, I note that prior to the aforesaid amendment, procedure for conduct of enquiry proceedings before designated authority (DA) and designated member (DM) was provided under Regulations 25 to 28 of the Intermediaries Regulations wherein Regulation 25 dealt with issue of SCN by DA, Regulation 26 dealt with reply of SCN by the Noticee, Regulation 27 dealt with recommendation for actions which could be made by the DA and Regulation 28 dealt with conduct of proceedings before DM like issue of SCN, hearing and passing of final order. After the amendment, Regulation 25, as substituted deals with holding of enquiry proceedings before DA, Regulation 26 deals with recommendation for actions which can be made by DA and Regulation 27 deals with conduct of enquiry proceedings before DM and passing of order by DM. Thus, the proceedings before DM which were earlier governed by the provisions of Regulations 28 are now governed by the

provisions of Regulation 27 with certain modifications. Therefore, by virtue of the judgment of Hon'ble Supreme Court in Venkateshwara Hatcheries case(supra), the new Regulation 27 is regarded having force continuously (by virtue of pre-existing Regulation 28) and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of new Regulation 27 i.e. January 21, 2021. Accordingly, the present proceedings can be concluded under the amended provisions of the Intermediaries Regulations and for the violations committed by the Noticee, directions under Regulation 27 of the Intermediaries Regulations can be issued.

12. It is contended by the Noticee that multiple proceedings have been initiated against the Noticee for investigation carried out in the scrip of Mefcom for the same period. In this regard the Noticee has referred to issuance of show cause notice dated September 26, 2017 under Section 11B of SEBI Act, 1992, which culminated into order dated February 12, 2020, Adjudication proceedings initiated against the Noticee by issuances of common show cause notice dated 21.02.2018 and the present proceedings under Intermediaries Regulation, 2008. In this regard, I note that SEBI is legally empowered under SEBI Act, 1992 to issue any directions under Chapter IV of the SEBI Act to *"protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit,"* for the violation of the provisions of SEBI Act, 1992 and/or Rules and Regulations made under it. Further, Chapter VI of the SEBI Act, 1992, empowers SEBI to adjudicate and impose penalty, by appointment of an adjudicating officer, on any person for violation of provisions of SEBI Act and/or Rules and Regulations made under it. Furthermore, Section 12(3) of the SEBI Act, 1992 empowers SEBI, to suspend or cancel a certificate of registration, by order, granted to any registered intermediaries in such manner as may be determined by regulations. For taking any action against any registered intermediaries, SEBI has framed the Intermediaries Regulations which *inter alia* provides the manner in which action against registered intermediaries is required to be taken. I note that the present proceedings have been initiated against the Noticee under these Intermediaries Regulations, 2008. Regulation 23 of the Intermediaries

Regulation *inter alia* states that SEBI is empowered to cancel or suspend or take any other action against any registered intermediaries for the contravention of any of the provisions of securities laws or directions, instructions or circulars issued thereunder and such power is without prejudice to any other action taken under the securities laws or directions, instructions or circular issued under which unequivocally includes proceedings under Chapter IV and VI of the SEBI Act. Since, SEBI is empowered to initiate multiple proceedings against the Noticee for violation of provisions of securities laws, I find no merit in the contention raised by the Noticee. In this regard I also note that the same contention which was raised by the appellant in the matter of Sunita Gupta vs SEBI (decided on April 21, 2017) was rejected by the Hon'ble Securities Appellant Tribunal which had observed as under:

“6..... Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted.”

“....7.... because, SEBI Act itself contemplates that where a person violates SEBI Act and the regulations made thereunder, then apart from imposing penalty under Chapter VIA, it would be open to the Board to issue such directions as it deems fit under Chapter IV of SEBI Act.”

13. I also note that the contention raised by the Noticee is factually incorrect also as the SCN dated September 26, 2017 issued under Section 11B of SEBI Act, 1992, which culminated into order dated February 12, 2020 against the Noticee was issued for the alleged violation of the provisions of SEBI Act, 1992 SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities

market) Regulations, 2003 and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 by certain suspected entities while trading in the scrip of Mefcom. SCN dated September 26, 2017 against the Noticee was disposed off in the matter as the Noticee was not termed to be connected with the Mefcom group through one other entity namely Master Finlease Ltd. Whereas the present proceedings have been initiated against the Noticee *inter alia* for unauthorized trading on behalf of its client which is all together a different cause of action and cannot be equated with the cause of action for which 11B proceedings were initiated earlier which resulted into order dated February 12, 2020 passed by the then WTM, against the Noticee . Therefore, the contention raised by the Noticee is misplaced.

14. I note that one of the reason cited in the post enquiry SCN for not concurring with the recommendations of DA is that Ms. Pushpa Bansal had denied trading in the scrip of Mefcom, which strengthen the fact that the Noticee was carrying out unauthorized trading in the account of Pushpa Bansal. It is also stated in the post enquiry SCN that the Noticee had not replied to the queries raised by its client Ms. Pushpa Bansal with regard to the trades happening in her account in the scrip of Mefcom. In this regard, the Noticee has contended that its client Ms. Pushpa Bansal had never filed any complaint either with any of the authorities or with them even when she came to know that the Noticee had carried out alleged unauthorized trading on her behalf. Regarding the allegation that the demat account of Ms. Pushpa Bansal did not had any shares of Mefcom, Noticee submitted that trader who was punching their orders is no more available with it to enable it to comment upon her trading pattern. Furthermore, it is submitted that non-transfer of shares to demat account of the client cannot be conclusive proof that she has not given any orders/ not traded since there are number of reasons for the same viz. trading pattern of the client may be day trading or buy today sell tomorrow etc., non-payment of dues, specific instructions not to transfer the shares since the client does not have to pay DP charges etc.

15. In this regard, I note that the Noticee in its reply has provided a proof of delivery of statement of account for the following periods.

- i) 01.04.2005 to 31.03.2006;
- ii) 01.04.2007 to 31.03.2008; and
- iii) 01.04.2008 to 31.03.2009;

Copy of bank statement highlighting payment of Rs. 24,410.80 to Ms. Pushpa Bansal has also been provided to contend that the client Ms. Pushpa Bansal was aware of the transactions executed by her through them. The noticee has submitted that whenever any client asks for statement of their record, they provide the same to the client and take their signature as acknowledgement. In this regard, the Noticee has provided set of copies of proof of delivery of account statement purported to be acknowledged by Ms. Pushpa Bansal. The Noticee has also claimed to have made payments to the client Ms. Pushpa Bansal to contend that she was aware of the transactions executed by her through it. I also note that ER has also observed that *from the statement of holdings of Pushpa, it is clear that as on October 06, 2006, she was holding securities in her account. Since, there is no material available on record to prove Deepak and Pushpa, have raised the issue of unauthorized trades in their account either with Exchange or with SEBI. Thus, the charges and allegations made against the Noticee cannot be proceeded further and same need to be dropped against the Noticee on account of benefit of doubt due to lack of substantial evidence.*

16. I also note that although it is true that Ms. Pushpa Bansal had denied trading in the scrip of Mefcom and vide letter dated December 16, 2014, submitted a copy of letter which she claimed to have written to the Noticee on December 05, 2013 with respect to unauthorized trades in her account, but it is also true that subsequent to the said letter dated December 05, 2013 she did not raise any complaint with any authority regarding unauthorized trading in her account. The DA has also observed that *"there is nothing on record to establish that Pushpa Bansal, further took up the matter to carry out further action in this regard. it is very unlikely that no follow-up or action was undertaken by the client*

Pushpa Bansal for unauthorized trades in her account. It is also observed by the DA that despite the fact that unauthorized trades had taken place in account of PK (Purshottam Khandelwal), Deepak and Pushpa, none of them have taken concrete steps towards reporting the fraud to any of the concerned agencies or for effective resolution of the same. Such as:

- i. Following up with the broker with respect to the alleged fraud;*
- ii. Non redressal of complaint by the Broker;*
- iii. Filing of FIR with respect to the alleged fraud with EoW;*
- iv. Filing of complaint with the respective exchange;*
- v. Filing of the complaint with SEBI etc.;*

17. I also note that the DA has not recommended any action against the Noticee after taking into account the facts and circumstances of the case, including lack of evidence and necessary records. Consequently, to impose any penalty, not recommended by DA would require stronger evidentiary proof which are not available on record. Therefore, I agree with the findings of DA, in this regard.
18. I note that it is contended by the Noticee that there has been inordinate delay in initiation of the proceedings and the SCN has been issued after around 15 years from the alleged violation and period of investigation. The Noticee has also relied upon various judgements passed by judicial fora. In this regard, I note that SEBI had conducted an investigation in the scrip of Mefcom for the period between January 01, 2006 to June 30, 2007 and during the investigation, it was *prima facie* observed that the Noticee had entered into unauthorized trades in the accounts of its clients and to enquire into the alleged irregularities in the scrip of Mefcom, DA was appointed by SEBI on May 18, 2017 and SCN dated March 05, 2018 was issued to the Noticee by the DA. I note that considerable time have elapsed since the alleged transactions had taken place. Further, the Noticee has contended that the trader who was punching the orders of Pushpa Bansal is no more available with it to enable it to comment upon her trading pattern. I also note that the Noticee has submitted that it has improved their systems, processes and internal controls since the investigation period.

19. Having regards to the facts and circumstances of the case and the aforesaid mitigating factors and lack of sufficient evidentiary proof, I agree with the findings of the DA that in absence of any proof, it is difficult to draw any adverse inference against the Noticee with respect to the alleged transactions carried out by the Noticee. Therefore, in light of the recommendation of the DA, the post enquiry SCN dated August 11, 2021 against the Noticee is liable to be disposed off without any adverse remarks.

Order

20. I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Regulation 27(5) of the Intermediaries regulations, hereby dispose off the post enquiry SCN dated August 11, 2021 against the Noticee.

Date: May 27, 2022
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA