

**SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

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

In respect of:

Abhipra Capital Limited (Stock Broker)

SEBI Registration No. : INZ000285230

PAN : AABCA1702F

In the matter of Abhipra Capital Limited

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1. Abhipra Capital Limited (*hereinafter also referred as ‘Noticee/ Abhipra’*) is a trading member of the stock exchanges (i.e. NSE, BSE and MSE) and is also registered with Securities and Exchange Board of India (**‘SEBI’**) as a stock broker as following:

Table 1- Details of Registration of the Noticee

Exchange	Segment	Registration No.
NSE/BSE	Equity	INZ000285230
NSE/BSE	Equity Derivative	
NSE/BSE/MSE	Currency Derivative	
NSE/BSE/MSE	Interest Rate Derivative	
BSE	Debt	

2. SEBI conducted inspection of the Abhipra for the period 01.10.2021 to 31.05.2022. The scope of inspection was to *inter alia* look into the Noticee’s compliance with respect to mis-utilization of clients’ funds, assessment of shortfall of available funds with broker and to look into G and J values, short margin, investor complaints and any

Order in respect of Abhipra Capital Limited

other non-compliance observed during the inspection. The inspection brought out deficiencies on the part of Abhipra on several counts as follows: -

- a) Misuse of clients' funds
- b) Non segregation of clients's funds
- c) Settlement of client funds
- d) Stock reconciliation
- e) Reporting and short collection of margin
- f) Negative network
- g) Reporting of client wise cash and cash equivalent balances to exchange.
- h) Cyber security and cyber resilience

3. While the concerned department of SEBI initiated Adjudication proceedings with regard to all observations, except the one which is subject matter of the present proceedings. The subject matter referred for inquiry and adjudication is allegation that the Noticee was engaged as a principal in a business other than that of securities involving personal financial liability which is, *prima facie*, in violation of Rule 8(1)(f) and Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 (**SCRR**). Thus, it has violated Clause A (5) of Schedule II read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992. The basis of this allegation is that Abhipra had given loans and advances to 14 entities with outstanding receivables amounting to Rs.15.39 crore as on 31.03.2022 and Rs.15.02 crore as on 31.05.2022.
4. A Designated Authority ("the **DA**") was appointed by SEBI vide communique dated 19.12.2023 who conducted enquiry proceedings in respect of the aforesaid alleged violation and submitted his Report dated 09.10.2024 ("**Report**") to SEBI in accordance with the provisions of the Intermediaries Regulations.
5. Thereafter, a Show Cause Notice ("**SCN**") dated 17.10.2024 as required under the Intermediaries Regulations enclosing therewith a copy of the Report dated 09.10.2024 was served to the Noticee calling upon it to show cause as to why action as recommended by the DA or any other action as deemed fit should not be taken against it in terms of Regulation 27 of the Intermediaries Regulations.

6. Vide its email dated 07.11.2024, the Noticee replied to the SCN when the matter was under consideration of the then quasi-judicial authority of SEBI who provided an opportunity of hearing to the Noticee on 05.12.2024. In the meantime, there was change in quasi-judicial authority pursuant to an internal transfer in SEBI on 02.12.2024 then the matter was then brought before me for my consideration. In the interest of justice and due to such change in quasi-judicial authority, an opportunity of hearing was provided to the Noticee on 11.12.2024 when the Authorised Representatives (ARs) for the Noticee, attended the hearing online through Webex and reiterated the submissions made vide reply dated 07.11.2024. The ARs also requested for time to make additional written submissions and to file documents in support thereof, which was allowed. The Noticee vide email dated 17.12.2024 submitted copies of following documents; viz;
- (a) ledgers and bank statements for evidence of payments which have been received;
 - (b) decision dated 25.09.2023 passed by the Member and Core Settlement Guarantee Fund Committee (MCSGFC) of NSE whereby NSE has levied penalty for engaging as a principal in a business other than securities involving personal financial liability;
 - (c) the networth certificates provided to the exchanges; and
 - (d) the copy of Kaul Polymers India Pvt. Ltd. being registered with RBI as an NBFC.
7. The replies and submissions of the Noticee in response to the SCN are, *inter alia*, as following: -
- 7.1 The exchanges i.e. NSE and BSE had also issued letters of observations and show cause notices and imposed fines upon the Noticee for the similar violation. SEBI thereafter carried out a post inspection analysis of the Noticee pursuant to which SEBI issued the present SCN seeking to re-impose penalty arising out of the observations made in the joint inspection. An order passed by SEBI will amount to double prosecution of the Noticee.
- 7.2 The Noticee reiterates the submissions made vide its reply dated 08.06.2024 made before the DA that the Noticee made investments in the form of loans and advances which cannot be considered as “*business*”. The DA has not dealt with this contention of the Noticee.
- 7.3 The DA has also failed to refer to the ratio of the Hon’ble SAT in the matter of ***Magnum Equity Broking Ltd. v/s NSE*** and its own view in the matter of ***Geojit***

BNP Paribas Financial Service Ltd. wherein the Ld. Adjudicating Officer made general observations on purposes of Rule 8(3)(f) of SCRR.

7.4 Rule 8(3)(f) as interpreted by SEBI itself in the **Geojit case** also states that there is no restriction on inter-corporate loans given by a SEBI registered intermediary. Even if in the facts of the **Geojit case**, loan was advanced to only one subsidiary company, the Ld. AO irrespective has stated that there is no restriction on inter-corporate ‘loans’. Even if investments by way of loans/advances were made to 14 entities, following the observation of SEBI itself, there is no restriction on such loans.

7.5 In the **Magnum case**, the Hon’ble SAT held that investment of surplus funds generated as a consequence of securities business with an NBFC registered with RBI cannot lead to an inference of engagement as a principal in business other than that of securities involving personal financial liability. Similarly, some amount was invested by the Noticee with Kaul Polymers India Pvt. Ltd. an RBI registered NBFC. Such investment was made out of surplus funds / profits over the years.

7.6 The DA also erred in referring to Action Energy Pvt. Ltd., for amount of Rs. 2,85,76,278 under Loans and Advances. The amount of Rs. 2,85,76,278 was against property and not in the nature loans and advance. There is no interest also received against such investment.

7.7 The SEBI Circulars dated 7.05.1997 and 29.09.2015 clarify with respect to Rules 8(1)(f) and 8(3)(f) of SCRR that borrowing and lending of funds by a trading member in connection with or incidental to or consequential upon the securities business would not be disqualified under Rules 8(1)(f) and 8(3)(f) of SCRR. These Rules have no application to investments by corporate stock brokers from their own funds.

7.8 The investments were from the profits and for securing its future by diversifying its savings. There was no personal financial liability created on the Noticee. In fact, the Noticee has also shown the interest income received from these investments in its audited financials as part of its non-operative income. The financials have been reported to the Exchanges since the beginning and there has been no objection raised thereon. The extract of the financials was also submitted to the DA. The Noticee, therefore, has demonstrated the nature of its investments and yet the DA failed to consider the same.

- 7.9 Without prejudice to the aforesaid submissions, the Noticee submits that it has recalled from the entities “almost” all the funds it had invested. No further investments are made to any of the entities. Only an amount of Rs. 1,76,46,789.00 remains to be returned. The recalled amounts are now invested in FDRs. The figure of Rs. 4,03,80,829 as on 28.10.2024 includes Rs. 2,27,32,042 of advance made to RBI registered NBFC. If this figure is reduced, then net amount remains only Rs. 1,76,46,789.00. The Noticee has not made any further loan and almost all recalled funds are parked in FDRs.
- 7.10 It is a matter of record that Abhipra has been making disclosures rather than hiding any information. The interest income received from these investments also features as non-operation income. For the first time, these investments are considered “principal business” by SEBI. Irrespective, in view of which also highlights to assume that the Noticee is engaged as a “*principal in a business other than that of securities*” would be far-fetched. It is reiterated that the investment was to park the surplus (same is not prohibited), they do not entail personal liability. Abhipra’s business remains the securities and allied business, as seen from its financial statements and disclosures. The extract of the balance sheet reflecting the non-operating income is annexed.
- 7.11 The long-term Investments are too meagre compared to Noticee’s business transactions. The investments cannot be classified as a principal business or any business at all. Even applying the Principle of *De Minimis*, the long term investments could not have been considered to be in contravention of any law.
- 7.12 The Noticee submits that it has recalled almost all the funds it had invested from the entities. No further investments are made with any of the entities. Only an amount of Rs. 1,76,46,789.00 remains to be returned.
- 7.13 The action sought to be taken against the Noticee is excessive and disproportionate. The Hon’ble Supreme Court has held that the principle of proportionality envisages that a public authority ought to maintain a sense of proportion between particular goals and means employed to achieve those goals, so that administrative action impinges on the individual rights to the minimum extent to preserve public interest. The administrative authority, while exercising discretionary power will have to necessarily establish that its decision is balanced and in proportion to the object of the power conferred.

- 7.14 The Hon'ble Supreme Court in case of Hindustan Steels Limited Vs. Union of India (83 ITR 26) has held that penalty should not be imposed merely on the ground since it is provided in the law. There has to be a reasonable nexus between the objective which is sought to be achieved and the means used to that end. The action recommended to be taken against the Noticee is wholly out of proportion.
- 7.15 The allegations against the Noticee in the Enquiry Report cannot sustain and as such the recommended action is not warranted against the Noticee.
- 7.16 During the hearing, the AR of the Noticee stated, *inter alia*, that the transactions of the Noticee were temporary loans / advances given to the entities to earn interest. Further the Noticee has already recalled most of the amount that were advanced to these entities except for an amount of about Rs. 4.03 crore which also includes an amount of Rs.2.27 crore which is made to an NBFC as on 28.10.2024. The Learned AR further stated that based on the instruction of the Noticee, the remaining amount would also be recalled before the end of the current financial year.
8. I have carefully considered the Report of the DA, replies and submissions of the Noticee. The only issue in question in the instant proceedings is that during the inspection period, the Noticee had extended loans to 14 entities and has engaged as a principal or employee in a business other than that of securities or commodity derivatives involving personal financial liability which is in violation of Rule 8(1)(f) and Rule 8(3)(f) of the SCRR and thus, it has contravened Clause A (5) of Schedule II read with Regulation 9(f) of the SEBI (Stock Brokers) Regulations, 1992.
9. Before dealing with allegation and responses of the Noticee on merits of the case, I deem it fit to deal with a technical objection raised by it that for violation of the said Rules 8(1) f) and 8(3)(f) of the SCRR, the Exchanges viz NSE as well as BSE have issued letters of observations and SCNs and imposed fines upon it. Relying upon the order passed by the MCSGFC of NSE dated 25.09.2023, the Noticee has contended that any action by SEBI pursuant to the instant SCN would be a double prosecution. I do not agree with this submission for the reason that action taken by exchange/s and contemplated in the SCN are two different civil actions. One, taken by exchange/s against the Noticee as their member for non-compliance of their bye laws, rules and regulations and the other contemplated in SCN of SEBI against the Noticee as registered stock broker for non-observance of code of conduct. Thus, since both action

are civil actions, the principle of double prosecution would not apply in this case, though the principle of estoppel may apply, which in this case, would not, as the decisions are taken by two different authorities against the Noticee in two separate capacities.

10. Now, in order to deal with responses of the Noticee to the Report of the DA and the SCN, it is pertinent to deal with scope of the provisions of Rule 8(1)(f) and Rule 8(3)(f) of the SCRR read as under: -

Qualifications for membership of a recognised stock exchange.

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

(1) No person shall be eligible to be elected as a member if—

....

(f) he is engaged as principal or employee in any business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business:

Provided that nothing herein shall be applicable to any corporations, bodies corporate, companies or institutions referred to in clauses (a) to (n) of sub-rule (8).

Rule 8(3)(f) of SCRR;

“ ...

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

...

(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

...

(f) he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that—

(i) the governing body may, for reasons, to be recorded in writing, permit a member

to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items [(a) to (n)] of sub-rule (8).”

11. The above Rules are manifestly ambiguous with respect to their language. Though as per language of Rule 8(1) and 8(3) it looks like first apply at the time of seeking membership of the stock exchange the other applies for continuance of membership; it would be logical that rule 8(1) always applies being foundation for being a member of the stock exchange. The other ambiguity is with regard to provisions added in Rule 8(1) (f) and Rule 8(3) (f) by Securities Contracts (Regulation) (Amendment) Rules, 2003, w.e.f. 28.08.2003 which say that these Rules do not apply to companies. The scope of these provisos in my view are limited for companies referred to in items (a) to (n) of the proviso to sub-rule (4) and not for other companies. Another ambiguity apparently argued by many is that the sub- rules i.e. Rule (4) and (4A) though separately mentioned only apply to the companies incorporated under the Companies Act, 1956, sub- rule (5) applies to partners, sub- rule (6) apply to limited liability partnerships, sub-rule (7) applies to provident funds and sub –rule (8) applies to other institutions listed therein. All these sub-rules have no reference to Rules 8(1) and 8(3) so as to explicitly attract the disqualifications provided therein for entities mentioned in these sub-rules.

12. In my view, despite ambiguities in language, the Rules must be enforced keeping in mind the purpose and intendment when they are being applied in the context of prevailing business environment. The Rules must be given effect in that sense rather than applying them lexicographically. In ***Madras Stock Exchange v. S. S. R.***

Rajkumar¹ - Hon'ble High Court of Madras expressed the same concerns and held as under:-

“We have already set out Rule 8(3)(f) of Securities Contracts (Regulation) Rules. That Rule cannot be said to have been very well drafted. However, that by itself is no reason for not giving effect to it. Effect must be given after ascertaining the real purpose and intendment of the Rule. That Rule is in two parts. The first part prohibits the Member of the Exchange from being the principal or employee of any business other than that of securities. The second part permits his functioning as a broker or agent in a business other than securities, provided he does not incur any personal financial liability by functioning as such broker or agent.”

13. In the above case, Hon'ble Madras High Court upheld the expulsion of an individual member by the stock exchange who had challenged the same before the Hon'ble High Court *inter alia* on the ground that Rule 8(1)(f) and 8(3)(f) of the SCRR had been wrongly applied to the case of the petitioner. Hon'ble Madras High Court rejected the argument and held that the member cannot be entitled to continue as a member if he, after becoming the member of the stock exchange, assumes office of the Managing Director of a public limited Company which was listed on the Stock Exchange. Hon'ble High Court further said that he can't ride two horses by engaging in business unconnected with securities business, while seeking to function as a stock broker. *“This is clearly impermissible”*. Thus, the disqualification attached with said Rules could be removed only in two ways i.e.

- (a) *by ceasing to carry on business on the stock exchange or*
- (b) *by severing connection with any such business (which is a business other than that of securities or commodity derivatives).*

This case, laid down that any conflict of interest, even if it is not because of engaging in a fund-based activity as principal or agent, whether involving personal financial obligation or not, would attract the disqualification under Rules 8(1) (f) and 8(3) (f).

14. On 27.4.1995 SEBI reaffirming the applicability of Rule 8(1)(f) and Rule 8(3)(f) of the SCRR to corporate members, via a letter directed all corporate members to *“sever connections with businesses other than securities business forthwith”* and requested

¹ Decided on 25/02/2003

NSE to report on compliance. SEBI issued clarification vide its circular No. SMD/Policy/CIR-6/97 dated 07.05.1997 wherein it was clarified that borrowing and lending of funds by a trading member in connection with or incidental to or consequential upon the securities business would not be treated as a disqualification under Rules 8(1) (f) and 8(3)(f) of the SCRR. Vide its circular dated June 16, 1998, SEBI, prescribed a net worth computation methodology for derivative brokers which excludes investments done by them in associate companies. This circular also permitted inter *alia* doubtful debts and advances by such derivative brokers to be excluded while computing the networth.

15. In ***KJMC Capital Market Services Ltd. vs SEBI***² Hon'ble SAT observed that as per above said Rules a member is disqualified to be a member of a stock exchange if he is engaged as principal or employee in any business other than that of securities. Hon'ble Supreme Court in the matter of ***Premium Global Securities Pvt. Ltd.***³ observed that in order to comply with requirements of Rule 8(3)(f), members may either sever their brokerage business or their non-brokerage businesses, either by giving it up in entirety or transfer it to a subsidiary. The Hon'ble SC held that: - "*... In our opinion, the restriction imposed was to not have fund-based and trading activities together under one roof.*"
16. In ***Magnum Equity Broking Ltd. Vs. NSE***⁴; Hon'ble SAT held investment of surplus funds, generated as a consequence of securities business, with an NBFC registered with RBI cannot lead to an inference that the stock broker is engaged as a principal in business other than that of securities involving personal financial liability.
17. In the present case, it is beyond cavil that the primary / dominant business of the Noticee is stock broking business. Admittedly, the Noticee had extended loans and advances to 14 independent entities and the status of such loans and advance, according to the Noticee, is as following:

² Decided on 30 May, 2006

³ CIVIL APPEAL NO. 3682 OF 2006 decided on December 09, 2015

⁴ Appeal No. 461 of 2022 decided on 29.11.2023

Table 2- Status of loans and Advances

Party Name	As per Inquiry Report *	Balance as on 31.03.2024	Present Status as on 28.10.2024
Bimal Aggarwal HUF	185,27,091.00	150,90,708.00	107,00,000.00
Gudiya Impex	66,23,644.00	-	-
Alert Buildwell Pvt. Ltd	39,66,546.00	42,49,346.00	42,49,346.00
Apple Realtors Pvt. Ltd	28,47,525.00	-	-
Express Buildtech LLP	105,11,418.00	26,97,443.00	26,97,443.00
Kaul Polymers India Pvt. Ltd. (NBFC)	367,03,350.00	232,34,040.00	227,34,040.00
Manjeet Plastic Ind.	123,45,955.00	-	-
NMVA Global Ventures LLP	68,29,450.00	33,84,705.00	
Rachna Sagar Pvt. Ltd.	184,79,589.00	35,03,014.00	
Rushil Global Ventures LLP	42,52,000.00	18,42,309.00	
True Value Apartments Pvt. Ltd.	42,36,500.00	217,000.00	
Leisure City India Pvt. Ltd.	-		-
TOTAL	12,53,23,068	542,18,565	4,03,80,829

*as on 31.05.2022

18. It is also admitted fact that the Noticee had received/earned interest income from such loans and advances given by it to above mentioned entities. Extending such loans and advances and earning interests is certainly not a business of securities or commodity derivatives.

19. One of the contentions of the Noticee is that it had made investments in the form of loans and advances which cannot be considered as “*business*”. Further, such long term investments are not in contravention of any law. This argument may look attractive at first blush but analyzing the above decisions and clarifications in respect of disqualifications under 8(1)(f) and Rule 8(3)(f) of the SCRR, it is evident that what is

impermissible under these Rules is engaging in business unconnected with securities business or commodities derivative business. It is immaterial whether the other 'business' need a definition or not when every other business/activity/position (not being securities or commodities derivatives business or business incidental thereto) involving conflict of interest or personal financial obligation has been ousted from the domain permissible business. I also note that it is settled position that the word "business" is by itself not a word of art and is capable of being construed both in the wider as well as in the narrower sense depending on the context in which it occurs. Following observations of Hon'ble High Court of Punjab & Haryana clarifies this position⁵ as under :-

"The question whether the word "business" has been used in a narrower sense or in a larger sense arises in a case where no statutory definition of that expression has been given in the relevant piece of legislation. At page 164 of Aiyar's Law Lexicon of British India (1940 Edition), the word "business" in its larger sense has been stated to mean "an affair requiring attention and care; that which busies or occupies one's time, attention, and labour as his chief concern." In the same passage the word "business" is mentioned to convey, in the narrower sense, mercantile pursuits; that which one does for a livelihood; occupation; employment; as, the business of a merchant; the business of agriculture." It has finally been stated that "the word 'business' is of large signification, and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors." Referring to the larger sense of the word, it has again been stated at page 165 that 'business is that which engages the time, talents and interest of a man; it is what a man proposes to himself; what belongs to a person to do or see done, that is properly his business; and a person is bound either by the nature of his engagements, or by private and personal motives, to perform a service for another.'"

20. When seen in the context of disqualification under Rule 8(1)(f) and Rule 8(3)(f) of the SCRR, adopting the narrower scope of such unconnected "business" would defeat the intendment of the disqualification i.e. clear segregation of unconnected activities of the stock broker so as to keep its primary business in securities market clearly separated

⁵ The Model Town Welfare Council, Ludhiana v. Bhupinder Pal Singh ILR 1971 (2) Punjab & Haryana 579

from its other unconnected activities so as to ensure that various risks emanating from such other activities which are not incidental or consequential to its business as a trading member. Therefore, the unconnected “*business*” in Rules 8(1) (f) and 8 (3)(f) of SCRR has to be interpreted in a broader sense so as to rule out any activity of the stock broker which may involve personal financial liability for the stock broker. When seen in the context and purpose as laid down in above discussed judgements in ***KJMC Capital Market Services Ltd.*** (Supra), Madras High Court in ***S. S. R. Rajkumar case*** (Supra) and Hon’ble SC in ***Premium Global Securities Pvt. Ltd (Supra)*** any fund - based activity except that as clarified by SEBI or judicial pronouncements would attract the disqualification.

21. In my view, the unconnected business or activity need not be a long term activity as contended by the Noticee. What is disallowed is engaging in a fund- based activity which may involve personal financial liability. Such long term loans and advances extended by the Noticee would, no doubt, be legal but they do attract the disqualification under Rule 8(1)(f) and Rule 8(3)(f) and that disqualification can be cured only by two ways as permitted under Rules i.e. (a) *by ceasing to carry on business on the stock exchange* or (b) *by severing connection with any such business*. Natural consequence of failure in this regard, would be enforcement and/or corrective actions under facts and circumstances of each case.
22. Further, in the instant case, extending loans and advances to the entities is neither incidental nor consequential upon the securities business of the Noticee. The Noticee has also not demonstrated by way of any evidence that these loans were incidental or consequential to the securities business or commodities derivative business permitted under the Rules. In fact, the record shows otherwise. The loans and advances given by the Noticees in this case were clearly unconnected with the securities business of the Noticee as a stock broker. The claim of the Noticee in this regard is rejected accordingly.
23. The other contention of the Noticee is that its investments were from the profits and non-operative income for securing its future by diversifying its savings and there was no personal financial liability created on the Noticee. It is relevant to mention that the

expression “*not involving any personal financial liability*” used in Rule 8(1)(f) and Rule 8(3)(f) is of much significance. The disqualification does not entail actual incurring of financial liability. It is immaterial to consider under the Rule 8(1) (f) and 8(3) (f) of SCRR as to whether, in this case, any personal financial liability has not happened or will not happen. Under the aforesaid Rules, it is not permissible for a stock broker to engage in any business activity which involves the possibility of incurring financial liability irrespective of the actual outcome of the said business activity. It is irrelevant for considering the disqualification whether loans and advances have earned interest income that is disclosed as non-operative income and that this unconnected business has not actually resulted in incurring financial liability.

24. There is no dispute that the principal business of the Noticee remains the securities and incidental business and SEBI has also not treated its unconnected lending activity as its ‘principal business’. Therefore, apprehension of Noticee in this regard is untenable.
25. The Noticee has also placed reliance on the Adjudication Order in the matter of ***Geojit BNP Paribas Financial Services Limited***⁶, which justified inter corporate loans given by a stock broker. I note that in this it was observed that the main purpose of rule 8(3)(f) is to “*prohibit the brokers to invest the clients’ money in other businesses*”. This implies that the primary objective is to safeguard the clients’ funds. Thus, the stock brokers could engage in other fund based businesses if the clients’ funds were kept unaffected. This seems to be not the intent of the Rules as it would limit the scope of their applicability and would defeat their intendment as highlighted by Hon’ble SC in ***Premium Global Securities Pvt. Ltd. Case*** (Supra). I therefore, do not concur with the views of the AO in that case. I further note that later, in 2020, the Hon’ble SAT, in ***Jitendra Pukhraj Jain v. NSE***⁷, observed that:

“...we note that Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 imposes restrictions on the members of Exchange from conducting any business other than in securities. Hence the finding in the impugned order that by giving loans to other entities, including employees /family members of the appellant, the appellant has

⁶ October 31, 2017

⁷ Order dated : 17.11.2020

violated the said Rule 8(3) (f) of the Securities Contracts (Regulation) Rules, 1957. We also note that the intention behind the said provision is to prevent negative impact on the balance sheet of a broker and to maintain the safety and integrity of the securities trading eco system."

26. This Judgement of Hon'ble SAT obviously broadened the scope of Rule 8(3)(f) by formulating its primary purpose from mere protection of client's funds to ensuring the overall financial stability of the stockbrokers. I am of the view that decision of Hon'ble SAT, being from a higher forum, has better relevance value apart from being germane to the obligations of stock brokers towards investors and Stock exchanges/clearing corporations in respect of their trades undertaken on behalf of clients and their proprietary trades as well. I also note that subsequently, in ***Inventure Growth and Securities Ltd***⁸. SEBI –WTM did not agree with view taken in ***Geojit Paribas*** case (Supra) and made it clear that:

"I note that the said Adjudication Order was passed based on a very narrow interpretation of the purpose of Rule 8(3)(f) of SCRR by the Adjudicating Officer which as per him, was to prohibit the stock brokers from investing the clients' money in other businesses. I do not concur with the said view of the Adjudicating Officer. As noted in the preceding paragraphs, under Rule 8(3)(f) of SCRR any kind of business activity which may incur financial liability on the trading member is prohibited, if the said business activity is not incidental to or consequential upon the securities business and not merely if the purpose of the loan is investing clients' money in its other businesses...."

27. The above order of SEBI –WTM also broadened objective of said Rule 8(3)(f) and observed that *"the word "business" has to be interpreted in broader sense so as to rule out any activity/affairs of a trading member which may result in creating personal financial liability for the trading member that may cause prejudice to the interests of its investor clients."* I, therefore, reject the contentions of the Noticee that its case should be decided in light of above order of SEBI in ***Geojit Paribas*** case.

⁸ WTM/SM/MIRSD/MIRSD_DPIEA/21188/2022-23 dated March 14,2022

28. The Noticee has also claimed that benefit of ruling of Hon'ble SAT in **Magnum Equity Broking Ltd.** (Supra). In note that in that case, the funds were advanced from the account of the stock broker and there was no dispute that the funds were their own moneys. Hon'ble SAT found that the transaction was not a loan as the agreement between the stock broker and the NBFC in question showed that it was for investment of funds as inter-corporate deposits. This judgement indicated that non-loan investments made in NBFCs out of own funds of the stock broker will not attract the disqualification under Rule 8(3) (f). In the present case, though there is no dispute that the funds were advanced from the account of the stock broker and the funds so lent were its own moneys, admittedly, all the loans and advances were not to NBFCs as inter corporate deposits. In the instant matter, during the joint inspection of SEBI with the stock exchanges it was observed that there were outstanding loans and advances made by the Noticee to 14 entities to the tune of Rs. Rs.15.39 crore as on 31.03.2022 and Rs.15.02 crore as on 31.05.2022. However, the Noticee has demonstrated that among the 14 entities to whom the Noticee has made loans / advances, only with respect to one entity i.e Kaul Polymers India Pvt. Ltd., the Noticee has demonstrated that that it has made advance / loan, with an RBI registered NBFC.

29. At this juncture it is pertinent to note that NSE vide its Circular No.02/2022 dated 07.01.2022 had issued further clarification to the Rule 8(1)(f) and 8(3)(f) of the SCRR. In this regard, **Kotak Securities Ltd.** filed a Writ Petition No. 25/2024 in the Hon'ble Bombay High Court challenging the vires of the circular issued by NSE vide which NSE held Kotak Securities Ltd. to have violated Rule 8(1)(f) and Rule 8(3)(f) of the SCRR and clause 10 of the NSE Circular dated 07.01.2022 as it had made investments in its four subsidiary companies which were not carrying out any broking business. In this regard, I note that the Hon'ble Court vide its order dated 25.07.2024 has, *inter alia*, clarified that: -

7. We clarify that the "activities or transactions" stayed is only restricted to clause 10 which reads as under:

"10. Investments made in group companies such as subsidiaries & associates etc., not in connection with or incidental to or consequential upon the securities/commodity derivatives business. (Ex. Investment in companies engaged in other businesses such as NBFC, Real Estate etc.)"

30. Since, above clause 10 of the NSE circular is stayed by the Hon'ble Bombay High Court, I give benefit of doubt to the Noticee with regard to its loan/ advances to Kaul Polymers India Pvt. Ltd. However, the fact still remains that the Noticee had given loans and advances to other entities who are not NBFCs.
31. I further, note that Central Government has recognized the applicability of this model of Rules to the evolution of broking business from a traditional brick-and-mortar model to a modern fintech based model . The Central Government had floated the consultative paper to review the appropriateness of safeguards embedded in the said Rules so that the intent of the Rule is served without constraining activities of the stakeholders. It was proposed to exempt the investments made by a member except when such investments involve client funds or client securities, or relate to arrangements which are in the nature of creating a financial liability on the broker. The SCRR has yet not been amended and the position as clarified by SEBI in its circulars and judicial pronouncements shall continue to be applicable. I, therefore, deem it appropriate to proceed in the matter on the basis of the facts and circumstances of the case and Rules and clarifications applicable as on date.
32. The Noticee has claimed that amount of Rs. 2,85,76,278 was against property and not in the nature loans and advance. There is no interest also received against such investment. Noticee has not given any evidence in support of this claim. I reject this argument for the simple reason that the Rules do not permit any such loan/advance. I note that NSE has also not found merit in such claim of the Noticee in its order dated 25.09.2023.
33. From the documents submitted by the Noticee, it is seen that NSE had conducted a forensic audit of the Noticee's books and records for the period from 01.04.2018 to 31.03.2021. It observed that the Noticee had extended loans and advances to 10 entities amounting to Rs.9.59 crores, Rs.11.76 crores and Rs.11.60 crores for the financial years 2018-19, 2019-20, and 2020-21, respectively, and interest earned on the said loans and advances amounting to Rs.3.03 crores. Based on the findings of the forensic audit, the NSE had issued a SCN alleging various violations by the Noticee including the engagement as a principal in a business other than securities involving personal

financial liability. NSE vide its order dated 25.09.2023 has found the Noticee in violation of the Rule 8(3)(f) of SCRR and has levied a penalty of Rs. 5 lakhs and has also directed the Noticee to recover the loans and advances within 3 months from the date of the order.

34. Although the noticee has claimed that it has lent the monies from its own funds and earned interest on these loans and advances, on a perusal of the network of the Noticee from the MCSGFC's order it is seen that the Noticee had a negative network of Rs. 1 crore as on 31.03.2021 and its network remained negative even till 31.03.2023 wherein the network was negative Rs.8.76 crores. SEBI's joint inspection with exchanges has also brought out that the network of the Noticee was negative during the entire inspection period. Details of network and doubtful debts and advances as per NSE's order and the SEBI's joint inspection with the exchanges as against the claim of the Noticee are as under:-

Table 3- Network of the Noticee

Year ending	Network (Rs. Crore)		Doubtful debts and advances (Rs. Crore)	
	As per Noticee	As per SEBI/NSE	As per Noticee	As per SEBI/NSE
31.03.2021 *	20.95	(-) 1	1.59	24.35
30.09.2021 ^	21.6	(-) 6.32	1.59	29.54
31.03.2022 ^	22.98	(-) 4.09	0.20	27.22
31.03.2023 *	8.62	(-) 8.76	15.15	28.47

* As per NSE's MCSGFC Committee's order dated 25.09.2023.

^ As per SEBI's joint inspection with exchanges for the period 01.10.2021 to 31.05.2022

35. The above findings show negative network of the Noticee during relevant periods which clearly defeats the objective clarified by Hon'ble SAT in **Jitendra Pukhraj Jain** case (Supra). I also note that the doubtful debts should to be excluded while

computing the networth of the Noticee which is also a broker in derivative segment as permitted by SEBI vide circular dated June 16, 1998. Be that as it may, the fact remains that the purpose pronounced in **Jitendra Pukhraj Jain** case is not only to prevent negative impact on the balance sheet of the Noticee but also to maintain the safety and integrity of the securities trading eco system and the Rules as they stand today have to be applied in that sense.

36. The Noticee has also claimed that it has recalled most of the loans and advances and there is an outstanding balance of Rs.4.03 crores only and out of this total outstanding balance, an amount of Rs. 2.27 crores pertain to Kaul Polymers India Pvt. Ltd. which is a RBI registered NBFC. I find that Noticee had committed violation during the inspection period with regard to its loans and advances to 13 entities excluding this NBFC and a part of such loans and advances is still outstanding to date; despite directions vide NSE order dated 25.09.2023 and admittedly the Noticee has failed to take corrective steps as per direction of NSE.

37. In view of the above, I find that the by engaging above find-based activity, during the inspection period, that are impermissible under Rules 8(1) (f) and 8(3) (f) of SCRR; the Noticee has contravened the provisions of Clause A (5) of Schedule II read with regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992 which provide as under: -

“A. General.

(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.*

Regulation 9(f)

“9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

.....

(f) *he shall at all times abide by the Code of Conduct as specified in Schedule II;”*

38. I, therefore, concur with the findings made by the DA on the facts of this case and contraventions by the Noticee. I, however, note that the DA has recommended that Noticee viz; Abhipra Capital Limited (SEBI Registration No.INZ000285230) from taking up any new assignment or contract or launching a new scheme for a period of three months. To my mind, this recommendation is meaningless as it does not apply to

a stock broker who does not launches schemes like pooled investment vehicles. I, therefore, do not agree with such unprecedented recommendation.

39. Having found Noticee being in contravention of above provisions of Rules and Regulations, I proceed to examine as to what penalty should be inflicted upon the Noticee under Regulation 27 read with Regulation 26 of the Intermediaries Regulations considering the principles of consistency and proportionality. I note that in, similar matters, different actions have been initiated and different actions have been taken in the past. Few examples are as under: -

Table 4- Details of other orders

Name of the Broker	Type of proceeding SEBI/NSE	Amount of Loans	Nature of Order
Geojit BNP Paribas Financial Services (given to subsidiary company)	Adjudication Order dated 31.10.2017	71.94 crore	No penalty imposed.
Inventure Growth and Securities ltd. (given to subsidiaries)	WTM Order dated 14.11.2022	Rs.8.76 crore	Strongly warn noticee and advise to ensure strict compliance with Rules in future
Magnum Equity Broking Ltd. (investment with NBFC)	NSE Order dated 30.05.2022	79.75 crore	NSE imposed penalty of Rs.7.5 lakhs. SAT quashed the NSE order.
Keshav Securities Pvt.Ltd. (loan given to sister concern and relatives)	Order by Executive Director SEBI dated 19.04.2023	Rs.58.03 crore.	DA recommended censure. However, SEBI suspended the certificate of registration of the Noticee for a period of 2 months.

40. Though a consistent approach taking into account the provisions of regulations 25, 26, 27 and 28 of the Stock Brokers Regulations is desirable in such cases, the contravention

as found in this case, which goes to the very foundation of eligibility of the Noticee to be member of the stock exchange and to continue as such, cannot be exonerated based on technicalities as the very eligibility to be a stock broker is at stake when such contraventions occur as was held by Hon'ble High Court of Madras in. **S. S. R. Rajkumar case** (Supra). Although the consistency could be taken in account as a mitigating factor, it would not be fit for giving complete allowance on this ground when contravention leads to complete ineligibility.

41. Further, in my view the doctrine of *de minimis non curat lex* (i.e. the law does not concern itself with trifles) as claimed by the Noticee would not apply in this case as the very violation renders the Noticee ineligible to continue as a member of stock exchange and this ineligibility can be removed only in two ways as found hereinabove. Such contraventions are not minor or venial or trifles. The Noticee can also not avail the benefit of judgement in case of **Hindustan Steels Limited** case for main reason that the said Judgement of Hon'ble Supreme Court also allows imposition of penalty on the basis of reasonable nexus between the objective which is sought to be achieved and the means used to that end. Further, in **Securities And Exchange Board Of India vs Cabot International Capital⁹**, Hon'ble Bombay High Court held that decision in **Hindustan Steel Case** has no application in case of penalties under SEBI Act.

42. Therefore, while applying the principle of proportionality, in the facts and circumstances of this case, I have also taken into account the penalties imposed by NSE on the Noticee as mitigating factor. However, no evidence has been brought on record, either by the DA or the Noticee , to show that the penalty has been paid by the Noticee. It is also a case where the Noticee has engaged in fund based activities by granting loans and advances to non-connected and non-associated companies and has failed to take corrective steps within time permitted by NSE vide its order dated 25.09.2023 till date; though it has called back substantial part of those loans and advances. I am of the view that the commensurate regulatory action is warranted in the facts and circumstances of this case apart from any corrective measures that the stock exchanges must ensure.

⁹ (2004)2COMPLJ363(BOM), Decided on 3rd March, 2004

43. In view of foregoing, I, in exercise of the powers conferred upon me under Section 12(3) read with Section 19 of the SEBI Act, 1992 read with Regulation 27 and 26 of the SEBI (Intermediaries) Regulations, 2008 hereby prohibit the Noticee viz Abhipra Capital Limited (SEBI Registration No. INZ000285230) from taking up any new clients as a stock broker with its registration number INZ000285230 on any segment of stock exchanges where he is a member for period of one month.
44. While parting with this order, I would also urge SEBI to advise the BSE/NSE to enforce their orders in accordance with law and ensure corrective measures to call back all loans and advances that are still outstanding in this case.
45. This order shall come into force with immediate effect.
46. A copy of this order shall be served on the Noticee and the recognized stock exchange.

Date: December 31 , 2024

Place: Mumbai

SANTOSH SHUKLA
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA

Order in respect of Abhipra Capital Limited