

SECURITIES AND EXCHANGE BOARD OF INDIA

CONFIRMATORY ORDER

Under Sections 11(1), 11(4) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee	Registration No.
Axis Capital Limited	INM000012029

In the matter of Non-Convertible Debentures issued by Sojo Infotel Pvt. Ltd.

1. Securities and Exchange Board of India (“SEBI”) issued an Interim Order dated September 19, 2024 (“Interim Order”) against Axis Capital Limited (“ACL” / “Noticee”) for the alleged violation of the provisions of regulation 13A of the SEBI (Merchant Bankers) Regulations, 1992 (“MB Regulations, 1992”) in the matter of non-convertible debentures (“NCDs”) issued by Sojo Infotel Pvt. Ltd. (“Sojo”).
2. The Interim Order, *inter alia*, recorded the *prima facie* findings that the underwriting commitment provided by ACL in its capacity as the Merchant Banker and underwriter in respect of NCDs issued by Sojo could not be termed as an underwriting activity as it was not an agreement to “*subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.*” Rather, it was a guarantee/indemnity towards redemption of NCDs in the event of default on maturity, which ACL was not permitted to do under the existing regulatory framework. Further, the Credit Rating Agency had rated and assigned Credit Enhancement ratings to the said NCDs on the basis of the guarantee/indemnity provided by ACL which was legally enforceable, irrevocable and unconditional covering the entire amount and full tenure of the rated instrument.

3. SEBI further recorded a *prima facie* finding that the role played by ACL in the transaction of Sojo was not part of issue management but of security enforcement mechanism, which essentially fell in the domain of debenture trustee. The whole transaction was, in substance, a structured secured credit transaction in the cloak of a capital market instrument (bonds) designed to finance an acquisition, which had adequate collateral / guarantees in the form of pledge of shares, personal guarantees of promoters of Sojo, lien over escrow account and hypothecation of assets of Sojo. ACL's credit support or credit enhancement, which was a credit guarantee in the guise of underwriting, was a critical component of the said structured credit transaction. ACL was, in effect, taking a credit risk exposure in the transaction, rather than market risk. By undertaking such activities, ACL got into the realm of banking, as the Sojo transaction had all the ingredients of a secured lending transaction.
4. It was thus noted that ACL went beyond the mandate of issue management, as the activity undertaken by ACL was beyond the realm of underwriting and the role of merchant banker as defined in MB Regulations, 1992.
5. It was observed that ACL had carried out similar activities in five other issues as well during the period from FY 22 to FY 23.
6. In view of the *prima facie* findings recorded in the Interim Order, considering the urgent need to step in and pass interim directions, pending inspection, SEBI, in order to prevent any further erosion in market integrity by virtue of such practices and to protect the integrity of the securities market, restrained ACL from taking up new assignments in the capacity of a merchant banker, arranger or underwriter for any issue / offer for sale of securities in the debt segment, till further orders.
7. The Noticee vide letter dated October 09, 2024 submitted its reply to the Interim Order. The submissions made by the Noticee are summarized below:
 - (a) ACL has always conducted itself as a responsible merchant banker with the highest standards of integrity, responsibility and professionalism,

and been in compliance with applicable law. ACL denies that it has contravened any provisions of law as set out in the Interim Order or otherwise. ACL also denies all the contentions/allegations in the Interim Order.

- (b) The Interim Order ought to be revoked forthwith for the following reasons:
- i. SEBI ought not to have passed the Interim Order, without giving ACL an opportunity to be heard as SEBI was informed by ACL by its letter dated May 31, 2024, that ACL has not undertaken such transactions since April 2023, and has no intention of continuing the aforesaid business. There was no urgency to pass the *ex parte* Interim Order.
 - ii. The Interim Order is disproportionate to the violations alleged and contrary to the established principles of law as it restricts ACL from taking up new assignments in the capacity of a merchant banker, arranger or underwriter in the debt segment.
 - iii. ACL has not provided guarantee for the NCDs issued by Sojo. ACL has acted as an arranger in relation to the NCDs issued by Sojo. The activities undertaken in relation to NCDs of Sojo were permitted to be undertaken by ACL under the MB Regulations, 1992 and were not in the nature of a credit risk related assignment. Further, the fee earned by ACL was not in violation of the MB Regulations, 1992 and was as per the market practice.
 - iv. ACL has not exposed Axis Bank Limited to any credit risks.
- (c) It cannot be said that the act of underwriting by a merchant banker is restricted to only such securities that remain unsubscribed in a primary issuance. The activity of underwriting would include not only the activity of underwriting to the extent of such securities that remain unsubscribed, but can and also includes a sale of securities, as is stated in the definition of 'underwriting' under the MB Regulations, 1992. Illustratively, an initial public offering with no element of fresh issuance of shares and only an offer for sale ("OFS") by existing shareholders can also be covered by an underwriting arrangement / agreement

whereunder any offer for any unsubscribed portion of the shares covered by an OFS could also be underwritten. The fact that the activity of underwriting carries with it an element of risk on account of the fact that it requires the underwriter to acquire / purchase the unsubscribed or underlying unsold shares makes no difference whatsoever, since the activity of underwriting can and does include underwriting of both, primary as well as secondary sale of shares. It cannot be suggested that such an activity of underwriting for the sale of shares by merchant banker is prohibited by law.

- (d) It is trite law that what is not prohibited, is permitted. On a true and proper interpretation of the extant law, there is no prohibition on a merchant banker from underwriting the sale of securities as a secondary sale. If that be the case, SEBI's contention in the present case that the underwriting activity undertaken by ACL amounted to taking a credit risk and is therefore violative of the law, is unjustified.
- (e) ACL has not provided a guarantee for the NCDs issued by Sojo. ACL was acting as an arranger in relation to the NCDs issued by Sojo (i.e., to identify potential investors / subscribers to the NCDs); a sale arranger in relation to the Pledged Shares after occurrence of an 'Event of Default/Asset Sale Event' in terms of the Share Agreement; and if ACL was unable to find a purchaser for the Pledged Shares, act as an underwriter for the Pledged Shares, thereby fulfilling its underwriting obligation. Each of these activities are permitted activities for a SEBI-registered Category I merchant banker under the MB Regulations, 1992.
- (f) The reference to "issue" of securities in the definition of 'underwriter' in regulation 2(1)(g) of the MB Regulations, 1992 should be read together with the term 'issue' specifically defined under regulation 2(1)(ca) of the MB Regulations, 1992 to ascertain the scope of permissible underwriting activities.
- (g) On a joint reading of the terms, 'underwriter', 'underwriting' and 'issue' under the MB Regulations, 1992, a SEBI-registered Category I

merchant banker is permitted to undertake underwriting activities not only in connection with a primary issuance of securities, but also secondary sale of securities. The temporary and transient holding of securities on its books till it can arrange to sell the same, is in line with the MB Regulations, 1992.

- (h) ACL's underwriting commitment was essentially an agreement to acquire the securities offered for sale, as covered under regulation 2(1)(h) of the MB Regulations, 1992 and does not amount to a contract of guarantee. Moreover, such underwriting was also carried out for an 'issue' of securities, which as stated above, includes a secondary sale of securities. Therefore, the underwriting activities of ACL falls within the role of an 'underwriter' and thus, is a permissible merchant banking activity under the MB Regulations, 1992. The underwriting commitment of ACL was not in the nature of a guarantee for the outstanding amounts payable to the NCD holders. ACL did not provide a guarantee for securing the NCDs and was not a guarantor vis-à-vis the NCD holders.
- (i) ACL's purchase of the Pledged Shares is also in line with the provisions of the Master Circular, which expressly permits a merchant banker to carry on underwriting activities and acquire securities as a part of its underwriting commitment in case of devolvment and dispose them off subsequently, so long as the securities so acquired are not classified as investments in the books of the merchant banker. It is to be noted that the pledged shares acquired by ACL are classified as 'securities held for trading' in the financial statements of ACL.
- (j) ACL has not undertaken any assignment which involves ACL taking a credit risk. While there is no express stipulation or limitation on merchant bankers being required to undertake only market risk-related assignments under the MB Regulations, 1992 and the Master Circular, the abovementioned underwriting activities of ACL in its capacity as a sale arranger and underwriter in connection with the Pledged Shares were in the nature of a market risk related assignments since ACL was required to identify buyers for sale of the Pledged Shares and its

obligation to purchase the Pledged Shares devolved only on a failure to find a market / buyer for the Pledged Shares.

- (k) The MB Regulations, 1992 do not state or envisage that fees received for the activities ought to be a one-time payment rather than a recurring payment received over the tenure of the NCDs. The manner in which the fee was earned by ACL for the activities was as per market practice.
 - (l) Under the MB Regulations, 1992, there are no limits imposed on the ability of merchant bankers to charge fees for underwriting obligations and accordingly, ACL is free to commercially agree on the quantum of its fees with issuers. In any event, the fee earned by ACL was for the entire transaction.
 - (m) The Interim Order has erred in inferring that the underwriting activities of ACL in the present transaction have exposed Axis Bank to credit risks. There was no agreement between Axis Bank and ACL in this transaction, and Axis Bank had no contractual obligation in this transaction. ACL is a subsidiary of Axis Bank and Axis Bank does not take on any liability for any obligations undertaken by ACL, in its capacity as a shareholder and holding company of ACL. ACL is an independent entity and is operating as a separate and distinct legal entity from its parent company and the contention that ACL's actions exposed Axis Bank to any credit risks are completely without any foundation or legal basis.
8. The Noticee was provided with an opportunity of personal hearing by scheduling the same on October 29, 2024. However, the Noticee made a request to re-schedule the same. As per the request of the Noticee, the personal hearing was re-scheduled to November 21, 2024. The Noticee attended the said hearing on November 21, 2024. Shri Janak Dwarkadas, Senior Advocate, argued on behalf of the Noticee.
9. During the abovementioned personal hearing, the Noticee categorically stated that it did not wish to make any submissions on the merits in respect of the preliminary findings recorded in the Interim Order. However, it prayed that the debarment imposed vide the Interim Order covering the entire debt

segment be limited to the activities covered in the Interim Order. During the course of hearing, the Noticee submitted that it was willing to voluntarily restrict itself from undertaking activities which have been *prima facie* found to be in violation of the provisions of the MB Regulations, 1992, as detailed in the Interim Order. The Noticee submitted the following undertaking and prayed for vacation of the Interim Order:

*“1. We, Axis Capital Limited (“**ACL**”), do hereby undertake to, henceforth, not carry out any transaction, which would involve ACL providing any credit risk cover (as contemplated in paragraph 10 of the interim order dated September 19, 2024 (“**Interim Order**”)), guarantee or indemnity relating to purchase of pledged shares (as contemplated in paragraphs 11 and 12 of the Interim Order), or such that it results in a structured secured credit transaction (as contemplated in paragraph 18 of the Interim Order), in the debt segment, until the final orders are passed in the present matter.*

2. It is clarified that ACL has not undertaken any transactions of the above nature since April 2023.

3. “

10. I note that while the Noticee has provided its response to the *prima facie* findings recorded in the Interim Order, SEBI's inspection in this matter is yet to be completed. Under these circumstances, it would be prudent to adjudicate the matter only after comprehensive findings emerge post the inspection by SEBI.
11. I note that while the Noticee has expressed its willingness to undergo voluntary debarment, as stated above, the fact that the Interim Order was issued to protect the integrity of the securities market cannot be lost sight of. Given the same, I deem it fit to continue the direction issued vide the Interim Order, pending the completion of inspection of Noticee by SEBI. However, in line with the course of action followed while passing the Confirmatory Order No. WTM/AB/DDHS/DDHS-PoD-1/30517/2023-24 dated June 20, 2024 in the matter of JM Financial Limited, I am willing to modify the interim direction issued in the Interim Order, so as to limit the debarment to the activities

alleged to be in violation of the provisions of the MB Regulations, 1992, as covered in the Interim Order.

DIRECTIONS

12. In view of the foregoing, I, in exercise of powers conferred upon me under sections 11(1), 11(4) and 11B(1) read with section 19 of the SEBI Act, 1992, hereby modify the direction issued vide the Interim Order dated September 19, 2024 as under:

'ACL shall not carry out any transaction, which would involve ACL providing any credit risk cover (as contemplated in paragraph 10 of the Interim Order), guarantee or indemnity relating to purchase of pledged shares (as contemplated in paragraphs 11 and 12 of the Interim Order), or such that it results in a structured secured credit transaction (as contemplated in paragraph 18 of the Interim Order), in the debt segment, until further orders.'

13. A copy of this order shall be served on the Noticee and Stock Exchanges to ensure compliance with the above direction.

DATE: NOVEMBER 26, 2024

PLACE: MUMBAI

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA