

WTM/AB/IVD/ID2/14669/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER 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	Monarch Network Capital Ltd.	INZ000008037

1. The present order deals with show cause notice (hereinafter referred to as '**Post Enquiry SCN**') No. EFD1/MIRSD/ENQ/DRA2/26/20-21/8970/1/2021 dated April 19, 2021 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 **Monarch Network Capital Ltd.** (herein after referred to as '**Noticee**'/'**MNCL**') in respect of Enquiry conducted against Monarch Project & Finmarkets Ltd. (herein after referred to as '**MPFL**') and Monarch Research & Brokerage Pvt Ltd (herein after referred to as '**MRBPL**'), formerly Krone Research and Brokerage Private Limited.
2. The SCN forwarded therewith copy of Enquiry reports dated May 5, 2012, in respect of enquiry conducted against MPFL and MRBPL (hereinafter collectively referred to as '**ERs**'), submitted by the Designated Authority (hereinafter referred to as '**DA**') under the provisions of Intermediaries Regulations. Since, MPFL and MRBPL have now been merged with the Noticee, the Noticee was called upon to show cause as to why the actions as recommended by the DA, including passing of appropriate directions should not be taken against the Noticee in terms of Regulation 27 of the Intermediaries Regulations.

3. In the ER dated May 25, 2012 in respect of MPFL and ER dated May 25, 2012 in respect of MRBPL, the DA had recommended the following:

“In view of the foregoing and after taking into consideration all the facts and circumstances of the case, I hereby recommend that the broker may be suspended for a period of fourteen (14) days.”

4. The Noticee did not file its reply to the Post Enquiry SCN dated April 19, 2021. However, vide letter dated June 01, 2021, the Noticee informed that they have filed settlement application dated May 24, 2021 in relation to Notice no. EFD1/MIRSD/ENQ/DRA2/26/20-21/8970/1/2021 dated April 19, 2021 issued under Regulation 27(1) of the Intermediaries Regulations in respect of the enquiry against MRBPL and MPFL. Thereby, it can be presumed that the service of SCN was completed against the Noticee. The settlement application dated May 24, 2021 filed by the Noticee has also been withdrawn by the Noticee.
5. An opportunity of hearing was granted to the Noticee on October 26, 2021. The Noticee failed to appear for the hearing on the scheduled date and time and did not make any adjournment request. Accordingly, the hearing was concluded qua the Noticee.
6. I have examined the facts of the case and the allegations against the Noticee, as mentioned in the Post Enquiry SCN dated April 19, 2021, the ERs, and the submissions made by the Noticee in its defence before the DA. Before proceeding any further, it would be appropriate to refer to the background of the matter, which is given in the succeeding paras.

Background

7. I note that SEBI had conducted an investigation into buying, selling or dealing in shares of Pyramid Saimira Theatre Ltd. and passed an ad-interim ex-parte Order dated April 23, 2009 restraining some persons/entities including Mr.

Vinod Kumar Bafna from buying, selling or dealing in securities market including in Initial Public Offerings, in any manner, either directly or indirectly until further directions. Pursuant to said order, it was observed that MRBPL and MPFL, SEBI registered brokers, executed trades on behalf of Mr. Vinod Kumar Bafna (debarred entity), for which proceedings were initiated for violation of provisions of Regulation 27(xv) and 27(xvii) read with Regulations 26(xv) of the erstwhile SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred as “**Broker Regulations**”) and Clauses A (1), A (2) and A (5) of the code of conduct for brokers as specified in Schedule II under Regulation 9 of the Broker Regulations.

8. In view of the aforesaid prima facie violations, Enquiry proceedings under the Intermediaries Regulations were initiated against MRBPL and MPFL for the aforesaid violations. Show Cause Notice(s) dated February 16, 2010 were issued to MRBPL and MPFL under the then existing Regulation 25 of Intermediaries Regulation, calling upon them as to why further action as specified under the Intermediaries Regulations should not be taken against them for the violations committed by them.

Proceedings against MRBPL

9. MRBPL vide its letter dated March 29, 2010 submitted that their reply to BSE dated May 13, 2009 may be referred in response to the show cause notice issued to them. MRBPL also stated that BSE has also levied monetary penalty on them and if the DA levies any penalty it will lead to double jeopardy. In their letter dated May 13, 2009 to BSE, MRBPL made the following submissions.

“

- i. *They have 65,000 registered clients and around 2,000 are actively traded on BSE.*
- ii. *The total no. of trades per day is 20,000 and turn over per day is approximately 35-40 Crores.*
- iii. *The order passed by SEBI did not come to their knowledge immediately and in ignorance the concerned official/dealer entered the transaction of Mr. Vinod Kumar Bafna. After they came to know of the debarment, they*

have not given the payout to the client and the amount has been deposited with the exchange.

- iv. Since the number of entities mentioned in the SEBI Order was 250, the manual verification for each and every entity was very difficult and they have taken corrective actions and upgraded their systems.*

.....”

10. I note that after consideration of the legal provisions, contents of the Show cause Notice dated February 16, 2010 and the submissions made by the MRBPL, the DA vide ER dated May 25, 2012 found the following in respect of MRBPL:

“.....

- i. The broker has accepted that trades were executed for Mr. Vinod Kumar Bafna, who was restrained from buying, selling or dealing in securities market as per aforesaid order dated April 23, 2009.*
- ii. Further, the reasoning that their official/dealer executed the transactions in ignorance of the Order passed by SEBI is not an accepted reasoning for non-compliance with the SEBI Order. A stock broker is expected to act with due skill, care and diligence in the conduct of his business and with ensuring compliance with the rules, regulations, circulars and orders of SEBI.*
- iii. Further, BSE had issued a show cause notice and levied a penalty as per their rules and bye laws and the proceedings have been initiated for violations of the SEBI Regulations and hence the submissions of the broker that the levy of any penalty by SEBI when BSE has already levied penalty would lead to double jeopardy does not hold ground.*
- iv. The Noticee has carried out trades on behalf of its clients who were restrained from buying, selling or dealing in securities. Thus, the broker has violated Regulations 27(xv) and 27 (xvii) read with Regulations 26(xv) of the Broker Regulations and clause A (1), A (2) and A (5) of the code of Conduct for Brokers as specified in Schedule II under Regulation 9 of the said Regulations as alleged in the SCN.*

.....”

11. A post enquiry show cause notice dated July 22, 2015 was issued to MRBPL under the then existing Regulation 28(1) of the Intermediaries Regulations

which called upon MRBPL to show cause as to why action, including passing of appropriate direction as the Designated Member considers appropriate should not be taken against them. The post enquiry show cause notice dated April 01, 2015 also forwarded copy of the ER dated May 25, 2012 along with the show cause notice. An opportunity of hearing vide letter dated September 22, 2015 was also granted to the MRBPL before Shri S. Raman, the then Designated Member on September 30, 2015. Vide the letter dated September 29, 2015, MRBPL informed SEBI that MRBPL is now merged with Network Stock broking Limited and its authorised representative appeared before the then Designated Member on September 30, 2015 and made his submissions. BSE also vide email dated December 19, 2016 informed that MRBPL was merged with Network Stock Broking Limited and subsequently name changed to MNCL. A settlement application was also filed by Network Stock Broking Limited, now known as MNCL i.e. the Noticee, which was rejected in August 2017.

Proceedings against MPFL

12. MPFL vide its letter dated March 04, 2010 replied to the Show Cause Notice dated February 16, 2010 issued by the DA and submitted that their submissions in earlier letter dated May 20, 2009 to SEBI may be referred. In their letter dated May 20, 2009, MPFL had submitted as follows.

“.....

- i. *They have more than 65,000 registered clients either directly or through the registered sub-brokers, out of 65000 clients approximate more than 2,000 clients are actively trading on the floor of NSE per day. The total number of trades per day approx. are more than 30000. The total turnover per day is approx. more than 150 crores in both the segment of the exchange.*
- ii. *Since incorporation and commencement of their business in securities market, no disciplinary action has been initiated by Exchange as well as relevant authorities.*
- iii. *The Order issued by SEBI and the notice issued by the Exchange did not come to their knowledge immediately and the concerned compliance*

official who is looking after the compliance was on leave for the relevant period and the terminal operator had no knowledge about the said SEBI Order and as per the instructions of Mr. Vinod Kumar Bafna, transactions were entered at the Mumbai office. Further, Mr. Vinod Kumar Bafna, the debarred entity did not inform them about his debarment from the securities market vide SEBI Order dated April 23, 2009. They have not parted with his payout funds and securities obligations for the said period.

- iv. In the said order, the number of entities/persons involved are more than two hundred and fifty and for which manual verification of each and every person/entity is time consuming and difficult for the alternate person to the compliance official, for which they are now taking necessary corrective steps and upgrade their necessary systems for which they shall take immediate action for the direction/notices issued by the exchnages as well as the relevant authorities from time to time.*
13. It was also submitted by MPFL that as per SEBI Instruction/order to NSE, NSE had issued show cause notice to them and after considering the matter, NSE had imposed a monetary penalty upon them. In case SEBI also impose monetary penalty, the same would lead to double jeopardy.
14. I note that after considering the legal provisions, contents of the show cause notice dated February 16, 2010 and the submissions made by the MPFL, the DA vide ER dated May 25, 2012 found the following in respect of MPFL:
- i. The broker has accepted that it carried out trades on behalf of its clients, Mr. Vinod Kumar Bafna, who was expressly prohibited by a SEBI order from buying, selling or dealing in securities marker as per aforesaid order dated April 23, 2009.*
 - ii. The contentions of the broker that it was not aware of the debarment Order passed by SEBI against Mr. Bafna as its compliance officer was on leave is not tenable. A stock broker registered with SEBI and operating in the securities*

market is expected to have adequate systems and processes in place to address such situations.

- iii. *The broker cannot rely on the clients for information regarding any disciplinary actions against the latter.*
 - iv. *Further, the reasoning of broker that it is time consuming and difficult to track actions against various entities against whom action had been initiated by SEBI is also not acceptable. Considering the substantial client base of the broker, it is critical for it to have suitable systems in place for updated information regarding its clients so as to ensure regulatory compliance at all times.*
 - v. *The broker has also contended that levying of any penalty by SEBI would tantamount to double jeopardy. I am not in agreement with the same as the Exchanges have levied penalty with respect to the deviations with their requirements and the instant report pertains to violations of the SEBI Regulations.*
 - vi. *I have also noted that the broker has not parted with the client's payout funds and securities obligations for the said period. However, the same does not alter the fact that the trades were executed by the broker in violation of the SEBI Order."*
15. A post enquiry show cause notice dated April 01, 2015 was also issued to MPFL under the then existing Regulation 28(1) of the Intermediaries Regulations which called upon MPFL to show cause as to why the appropriate penalty as recommended by the DA should not be imposed upon. The post enquiry show cause notice dated April 01, 2015 also forwarded the copy of ER dated May 25, 2012 along with the show cause notice. An opportunity of hearing vide letter dated May 29, 2015 was also granted to the MPFL before Shri S. Raman, the then Designated Member. MPFL vide letter dated June 12, 2015 confirmed their attendance. NSE vide its email dated December 12, 2016 informed that MPFL was merged with Network Stock Broking Limited and subsequently its name was changed to MNCL i.e. the Noticee. A settlement application was also filed by Network Stock Broking Limited, now known as, MNCL i.e. the Noticee, which was rejected in August 2017.

16. Vide emails dated December 15, 2016 SEBI sought the details related to MRBPL and MPFL from BSE and NSE. It was informed by NSE vide email dated December 23, 2016 that MPFL has now been merged with Network Stock broking Limited on August 21, 2015 and subsequently its name is changed to MNCL. Vide email dated December 19, 2016 it was informed by BSE that MRBPL is merged with MNCL vide exchange notice August 21, 2015. MNCL also filed settlement application in the matter, seeking settlement of the enforcement proceedings initiated against MRBPL and MPFL. The said settlement application came to be rejected by SEBI in August 2017.
17. Since, MPFL and MRBPL were merged with MNCL, Post Enquiry SCN dated April 19, 2021 was issued to MNCL, the Noticee, calling upon it to show cause as to why the actions as recommended by DA against MRBPL and MPFL, including passing of appropriate direction should not be taken against it.
18. Thereafter, on August 09, 2021, the file was placed before me for granting an appropriate date of personal hearing to MNCL. As stated above, MNCL was given a hearing on October 26, 2021. However, neither it appeared nor sent any request for adjournment. It is also noted that MNCL has not filed any reply to Post Enquiry SCN dated April 19, 2021 issued to it.

Consideration and findings:

19. Before dealing with the aforesaid violations, the relevant legal provisions of the Broker Regulations as existent 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)...

.....

.....

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

Regulation 9. 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

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.

.....

.....

(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

...”

20. I note that the Post Enquiry SCN dated April 19, 2021 called upon the Noticee to show cause as to why action as recommended by the DA, including passing of appropriate direction should not be taken against them 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.....".

21. 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.

22. I note that as the Noticee has not replied to the Post Enquiry SCN dated April 19,2021 and did not avail the opportunity of personal hearing, I would proceed on the basis of material available on record.
23. It is noted that the violations by MRBPL and MPFL were committed in year 2009, the show cause notice(s) were issued by DA to MRBPL and MPFL on February 16, 2010 and the ERs were submitted on May 25 ,2012. I note that a long and considerable time has elapsed since the issuance of show cause notice by DA and during this intervening period MRBPL and MPFL are also reorganized.
24. I note that the main allegation against MRBPL and MPFL, which now stands merged with the Noticee, i.e. MNCL, was that they had allowed one Mr. Vinod Kumar Bafna, to trade in securities market when Mr. Vinod Kumar Bafna was restrained from buying, selling or dealing in securities market vide SEBI's Order dated April 23, 2009. In this regard, it is noted that MRBPL and MPFL had *interalia* submitted before DA that execution of trades on behalf of Mr. Vinod Kumar Bafna was done due to mistake of their dealer/employee. However, as soon as they came to know about SEBI's Order Dated April 23,2009 restraining Mr. Vinod Kumar Bafna, they immediately stopped the payout of funds and securities of Mr. Vinod Kumar Bafna. I note that MRBPL and MPFL have also

submitted before DA that they had upgraded their systems and processes to avoid reoccurrence of such events.

25. I note that MRBPL and MPFL in their submissions to DA had contended that for their act of execution of trades on behalf of Mr. Vinod Kumar Bafna (debarred entity), penalty has already been imposed by BSE and NSE respectively upon them and if SEBI also imposes penalty, the same would amount to double jeopardy. In this regard, I agree with the observations of DA that the penalty has been imposed by BSE and NSE on their members for the violations of their bye laws framed by them in exercise of powers conferred upon them under Securities Contracts (Regulation) Act, 1956 whereas the present SEBI proceedings have emanated for the violation of Broker Regulations framed by SEBI. Though the alleged act of allowing trading to the debarred entity was same, it resulted into violation of both Stock Exchange(s) bye laws as well as Broker Regulations. It is trite law that same set of acts may constitute violation of two different provisions under two different laws and a person can be held responsible for both violations and the same would not amount to double jeopardy. However, the fact that penalty has already been imposed by one authority may be taken as mitigating factor for arriving at the quantum of penalty by other authority.
26. It is also noted that while initially the enquiry proceedings were initiated against MRBPL and MPFL, the Post Enquiry SCN dated April 19, 2021 was issued to MNCL, as MRBPL and MPFL had merged with MNCL. In this regard it is noted that civil proceedings can be continued against the new entity i.e MNCL which has come into existence after the merger/amalgamation of MRBPL and MPFL. However, the fact that, the erstwhile entities against which enquiries proceedings were initiated ceased to exist may be considered as mitigating factors for arriving at the quantum of penalty.
27. Having regards to the facts and circumstances of the case and the aforesaid mitigating factors, I am of the view that it would not be appropriate to accept the recommendation of the DA to suspend the certificate of registration of the

Noticee for two weeks at this point of time, and issuance of appropriate warning to the Noticee to be careful in future would be reasonable and would meet the ends of justice.

Order

28. 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 warn the Noticee to be careful in future in its dealings in securities market.

Sd-

ANANTA BARUA

WHOLE TIME MEMBER

Date: December 30, 2021

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA