BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/BM/RK/2024-25/30795)

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, IN RESPECT OF:

Name of the Entity	PAN
Horizon Portfolio Ltd	**AACH2097M**

in the matter of Horizon Portfolio Ltd

FACTS OF THE CASE

1. Securities and Exchange Board of India **("SEBI")** was in receipt of an application from M/s Horizon Portfolio Ltd (hereinafter referred to as the "**Noticee / Horizon**"), a SEBI registered Stock Broker bearing registration No. INZ000255037, for the approval of change in shareholding pattern resulting in change in control. While processing the application received from the Noticee, it was observed that the Noticee had allegedly not sought prior approval for the change in control twice before effecting the said change in control.

2. The aforesaid alleged conduct of the Noticee was in violation of the following and the same is mentioned in table 1 below:

Table 1:

Sr No.	Alleged Violation	Provisions Violated
1.	Failure to take prior approval from SEBI on two occasions before effecting change in control.	Regulation 9 (c) of SEBI (Stock Brokers) Regulations, 1992(hereinafter referred to as the "**Stock Brokers**" Regulations)

APPOINTMENT OF ADJUDICATING OFFICER

3. In this regard, SEBI initiated Adjudication Proceedings against the Noticee and had appointed Shri Biju S as the Adjudicating Officer(AO) vide order dated June 18, 2024, communicated vide communique dated June 20, 2024 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules**') to inquire into and adjudge under Section 15HB r/w Regulation 26 (xvii) of SEBI (Stock Brokers) Regulations 1992 of the SEBI Act, 1992 for the aforesaid violation alleged to have been committed by the Noticee. However, pursuant to the transfer of the erstwhile AO, undersigned was appointed as the AO in the matter vide Order dated July 22, 2024 communicated by communique dated July 29, 2024.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice No SEBI/EAD-1/BS/20928/1/2024 dated June 26, 2024 (hereinafter referred to as '**SCN**') was issued to the Noticee by the erstwhile AO in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4(1) of the SEBI Adjudication Rules, to show cause as to why an inquiry should not be held and penalty be not imposed upon it under Section 15HB of the SEBI Act r/w Regulation 26 (xvii) of SEBI (Stock Brokers) Regulations 1992 for the aforesaid alleged violations.

5. The said SCN duly served on the Noticee via SPAD. The proof of service is on record. In response, Noticee submitted its reply to the SCN vide its letter dated July 19, 2024. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the SEBI Adjudication Rules, vide Hearing Notice dated August 27, 2024,

which was duly delivered, an opportunity of personal hearing was granted to the Noticee to appear on September 17, 2024. The said hearing was attended to by the Authorized Representatives (ARs) of the Noticee wherein they reiterated the submissions made earlier by the Noticee vide its letter dated July 19, 2024. Further, Noticee vide email dated September 18, 2024 made additional submissions in the matter as sought during the hearing. Accordingly, submissions made by the Noticee vide its reply dated July 19, 2024 and additional reply dated September 18, 2024 are mentioned hereunder:

Reply of the Noticee

5.1 With regard to the change in control at first instance, Noticee submitted that in the first instance transfer of shares was within the promoter and promoter group i.e. among the Directors and then from the Director to his son.

5.2 Noticee acknowledged that the said change in control was required to be submitted but due to difference of opinion of the then Compliance officer that the said transfer required approval and amounted to change in control, the same was missed.

5.3 That there were two instances where it failed to take prior approval of exchange/ SEBI. However, the parties involved are different. The existing management was completely unaware of the fact that the previous management had not taken approval from SEBI.

5.4 Noticee submitted that on February 15, 2022, post facto change application was submitted by it on "Docrepositary" portal.

5.5 With respect to the second instance of change in control, Noticee submitted that it had submitted application for change in Director along with proposed change in shareholding with BSE. However, BSE had approved the change in Director but not change in shareholding.

5.6 Noticee submitted that NSE had not approved the change in control rather had marked a certain deficiency, which went unnoticed by it at that moment and later on when it came to its notice, by that time it had already made the allotment.

5.7 Noticee added that it has changed its compliance officer for better compliance and has intimated the exchange about that.

5.8 Noticee further submitted that the past management had assured it of all the past compliances but upon submission for change in control, it was informed by exchange that the list of shareholders did not match with the list last approved by the exchange and accordingly, exchange did not approve the proposal for change submitted by it and with no option left, it had submitted for post-facto approval.

5.9 That the delay in making application was completely unintentional and not with intention to deceit investor or regulatory bodies.

5.10 That it has voluntarily disabled its segments since it was unable to meet the Net worth criteria for the stock brokers and it is not in operation since February 2024.

5.11 There is change in control but intention of the management was not taking any unfair advantage of investor. No investor is affected due to this transaction and it was mere lack of appropriate interpretation of provision due to which obtaining prior approval for change was missed.

5.12 That it was not in operation initially and after April 2023, it had started with proprietary trading in October 2023 and had on boarded just one client on test basis.

CONSIDERATION OF ISSUES AND FINDINGS: -

6. The charges levelled against the Noticee, reply of the Noticee and the documents / material available on record have been carefully perused. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee has violated the provisions of Stock Brokers Regulations as mentioned in table 1 above?

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act r/w Regulation 26 (xvii) of SEBI (Stock Brokers) Regulations 1992?

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

7. Before proceeding further, the relevant provisions of law are referred as under:

SEBI (Stock Brokers) Regulations, 1992

Regulation 9 (c) of SEBI Stock Brokers Regulations 1992:

Conditions of registration.

9 (c) *Where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;*

Issue No. I: Whether Noticee has violated the provisions of Stock Brokers Regulations as mentioned in table 1 above?

Alleged Violation: Failure to take prior approval from SEBI on two occasions before effecting change in control

8. With regard to the captioned allegation, it is observed that while processing the application submitted to SEBI by the Noticee w.r.t change in control, allegedly there

had been past instances of change in the control twice without prior approval from SEBI before effecting the said change in control.

9. The details of first such instance was allegedly observed in the shareholding pattern as on August 20, 2020. The relevant details are mentioned in table 2 below:

Details of Shareholder / Partners:

<u>Table 2</u>: Shareholding of Horizon Portfolio Ltd.

Sr No	Name of the Shareholder	Shareholding Pattern as on March 31, 2020			Shareholding Pattern as on August 20, 2020		
		No of Shares held	% of Shares held	Control Y/N	No of Shares held	% of Shares held	Control Y/N
1	Anoop Aggarwal	9,51,950	43.44	Y	-	-	-
2	Aparajita Aggarwal	1,65,713	7.56	Y	-	-	-
3	Shashwat Agarwal	8,49,032	38.74	Y	50	0.02	Y
4	Kavita Agarwal	2,24,500	10.24	Y	2,24,500	10.24	Y
5	Ashok Kumar Sharma	100	0.00	N	100	0.00	N
6	Sanjay Gupta	100	0.00	N	100	0.00	N
7	Gaya Prasad Gupta	100	0.00	N	100	0.00	N
8	Nibrahant Agarwal	-	-	-	19,66,595	89.74	Y
9	Bharat Yadav	-	-	-	50	0.00	N
	Total	**21,91,495**	**100**		**21,91,495**	**100**	

10. From the table 2 above, it is observed from the shareholding pattern of the Noticee for March 31, 2020 and August 20, 2020 that the promoter viz, Mr Shashwat Agarwal, was holding 8,49,032 shares with a shareholding percentage of 38.74 % as on March 31, 2020 and was left with only 50 shares as on August 20, 2020 i.e. shareholding percentage of Mr Shashwat Agarwal narrowed down to 0.02%. The shareholding of another promoter Ms Kavita Agarwal remained intact with 2,24,500 shares with a shareholding percentage of 10.24 % on both the aforementioned durations. However, name of one new person viz Mr Nibrahant Agarwal was figuring in the list

of promoters of the Noticee as per the shareholding as on August 20, 2020 wherein the shareholding of Mr Nibrahant was 19,66,595 shares with a percentage of 89.74%. Further, it was observed that Mr Anoop Agarwal and Ms Aparajita Aggarwal, who were the promoters as on March 31, 2020 with a shareholding of 43.44% and 7.56% respectively, were not appearing in the shareholding of the Noticee as on August 20, 2020. In this regard, it is observed that the aforesaid change in control allegedly took place and was not effected with prior approval of SEBI.

11. Similarly, second instance was allegedly observed in the shareholding pattern as on March 06, 2023. The relevant details are mentioned in table 3 below:

Details of Shareholders/partners:

Table – 3: Shareholding of Horizon Portfolio Ltd

Sr No	Name of the Shareholder	Shareholding Pattern as on August 20, 2020			Shareholding Pattern as on March 06, 2023		
		No of Shares held	% of Shares held	Control Y/N	No of Shares held	% of Shares held	Control Y/N
1	Nibrahant Agarwal	19,66,595	89.74	Y	-	-	-
2	Shashwat Agarwal	50	0.02	Y	-	-	-
3	Kavita Agarwal	2,24,500	10.24	Y	-	-	-
4	Ashok Kumar Sharma	100	0.00	N	-	-	-

5	Sanjay Gupta	100	0.00	N	-	-	-
6	Gaya Prasad Gupta	100	0.00	N	-	-	-
7	Bharat Yadav	50	0.00	N	-	-	-
8	Rahul Bahukhandi	-	-	-	14,16,595	64.64	Y
9	Tripti Khugshal	-	-	-	7,74,500	35.34	Y
10	Ved Prakash Khugshal	-	-	-	100	0.00	Y
11	Ashish Bahukhandi	-	-	-	100	0.005	Y
12	Pawan	-	-	-	50	0.001	N
13	Amit	-	-	-	50	0.001	N
14	Kamal Luthra	-	-	-	100	0.003	N
	Total	**21,91,495**	**100**		**21,91,495**	**100**	

12. Similarly, from the table 3 above, it is observed from the shareholding pattern of the Noticee for August 20, 2020 and March 06, 2023 that the promoters viz, Mr Nibrahant Agarwal, Mr Shashwat Agarwal and Ms Kavita Agarwal continued to hold 19,66,595, 50 and 2,24,500 shares with a shareholding percentage of 89.74%, 0.02% and 10.24% respectively. Further, it is observed from the shareholding pattern of the Noticee as on March 06, 2023 that one Mr Rahul Bahukhandi, Ms Tripti Khugshal, Mr Ved Prakash Khugshal and Mr Ashish Bahukhandi became part of promoter group with a shareholding of 14,16,595, 7,74,500, 100 and 100 shares with a shareholding percentage of 64.64%, 35.34%, 0.005% and 0.005% respectively. In this regard, it is observed that the aforesaid change in control allegedly took place and was not effected with prior approval of SEBI.

13. The shareholding pattern of Horizon Portfolio Ltd. as on June 06, 2023 and details of proposed Directors/Managing Partners of the Noticee are tabulated in table 4 and 5 below:

Table – 4:

Sr No	Name of the Shareholder	Shareholding Pattern as on June 06, 2023		
		No of Shares held	% of Shares held	Control Y/N
1	Rahul Bahukhandi	23,21,646	64.645	Y
2	Tripti Khugshal	12,69,322	35.340	Y
3	Ved Prakash Khugshal	164	0.005	Y
4	Ashish Bahukhandi	164	0.005	Y
5	Pawan	50	0.001	N
6	Amit	50	0.001	N
7	Kamal Luthra	100	0.003	N
	Total	**35,91,496**	**100**	

Details of Directors / Managing Partners:

Table – 5:

Sr. No.	Name of the Directors as on March 31, 2020	Name of directors as on March 14, 2022	Name of proposed directors after March 14, 2022
1	Anoop Aggarwal*	Tripti Khugshal*	Tripti Khugshal*
2	Aparajita Aggarwal*	Rahul Bahukhandi*	Rahul Bahukhandi*
3	Shashwat Agarwal	Aparajita Aggarwal*	Shashwat Agarwal*
4	Sanjay Gupta	Shashwat Agarwal*	Sanjay Gupta
5	-	Sanjay Gupta	Ved Khugshal
6	-	Ved Khugshal	-

*Designated Directors

14. Accordingly, in view of the above failure on the part of Noticee to take prior approval from SEBI on two occasions before effecting change in control as detailed above, it is alleged that the Noticee has violated Regulation 9(c) of SEBI (Stock Brokers) Regulations 1992.

15. With regard to the change in control in first instance, Noticee submitted that in the first instance transfer of shares was within the promoter and promoter group i.e. among the Directors and then from the Director to his son.

16. Noticee acknowledged that the said change in control was required to be submitted but due to difference of opinion of the then Compliance officer the said transfer required approval was missed out.

17. Noticee submitted that on February 15, 2022, post facto change application was submitted by it on "Docrepositary" portal.

18. With respect to the second instance of change in control, Noticee submitted that it had submitted application for change in Director along with proposed change in shareholding with BSE. However, BSE had approved the change in Director but not change in shareholding. Similarly, Noticee submitted that NSE had not approved the change in control rather had marked a certain deficiency, which went unnoticed by it at that moment and later on when it came to its notice, by that time it had already made the allotment.

19. Noticee further submitted that the past management had assured it of all the past compliances but upon submission for change in control, it was informed by exchange that the list of shareholders did not match with the list last approved by the exchange and accordingly, exchange did not approve the proposal for change submitted by it and with no option left, it had submitted for post-facto approval.

20. Noticee made additional submission in the matter on September 18, 2024 giving information sought for during the hearing. The same is tabulated in table 6 below:

Table 6:

Date of Event	Detail of event	Prior Approval Submitted on date(Yes/No)	First post-facto submission date	Revision application submission dates
20.08.2020	Transfer of shares amounting to change in control	No	15.02.2022	16.02.2022 & 16.02.2023
04.11.2022	Transfer of shares amounting to change in control	No	06.12.2022	

21. It is observed from above that application w.r.t first instance was submitted by the Noticee belatedly after 2 years i.e. on December 15, 2022 and in the second instance on December 06, 2022 i.e. after one month. Thus, Noticee did not submit application for prior approval for change in control in both the instances.

22. In this regard, it is pertinent to refer to Regulation 9(c) of Stock Brokers Regulations, which reads as mentioned herein below:

Conditions of registration.

9 (c) *Where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;*

23. From the above, it is observed that the Noticee was required to obtain a prior approval from SEBI before change in control. However, Noticee failed to take the said approval twice. Further, submission of the Noticee that the prior approval not been taken due to difference in opinion of the then compliance officer and assurance

given to it by the previous management that all the requirements had been complied with cannot make good the non-compliance. Even after taking over the management in January 2022, Noticee failed to take prior approval of SEBI for change in control in the second instance. Therefore, submission of the Noticee that it went unnoticed is bereft of merits.

24. The aforesaid Regulation requires prior approval by the broker from SEBI for change in control to continue to act as such and not otherwise, which in the instant case Noticee failed in 2 instances as detailed in preceding paragraphs and submitted post fact approval application, which has not even been approved in both the instances.

25. With regard to the submission of the Noticee that its intention was not of taking any unfair advantage of investor and no investor was affected due to this transaction, the undersigned would like to rely on following order of Hon'ble Securities Appellate Tribunal (SAT) in the case of ***Mrs.Komal Nahata vs.SEBI (Appeal No. 5 of 2014 decided on January 27, 2014)*** *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure."*

26. Accordingly, in view of the above, it stands established that the Noticee has violated Regulation 9(c) of the Stock Brokers Regulations.

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB r/w Regulation 26 (xvii) of SEBI (Stock Brokers) Regulations 1992 of the SEBI Act?

27. As it has been established that the Noticee has violated following provisions of Stock Brokers Regulations.

    a) Regulation 9(c) of Stock Brokers Regulations.

28. In the context of the above, it is pertinent to refer to the observations of Hon'ble Supreme Court in the matter of Chairman, ***SEBI vs. Shriram Mutual Fund*** {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not".*

29. Therefore, in view of the foregoing and placing reliance on the above judgement of the Hon'ble Apex Court, the Noticee is liable for imposition of monetary penalty Section 15HB of the SEBI Act r/w Regulation 26 (XVII) of SEBI (Stock Brokers) Regulations 1992, which is reproduced hereunder:

Relevant provisions of SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Relevant Provision of SEBI (Stock Brokers) Regulations, 1992

Liability for monetary penalty

26(xvii) *Failure to obtain prior approval of the Board in case of change in control of the stock broker".*

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

30. While determining the quantum of penalty under Section 15HB of the SEBI Act r/w Regulation 26 (xvii) of SEBI (Stock Brokers) Regulations 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:

SEBI Act, 1992

15J Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely

(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

31. It is observed that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the said Noticee nor it has been alleged by SEBI. From the document available on record, the undersigned also notes that the Noticee has not been penalized by SEBI in the past. However, it is noted that the Noticee has not taken the prior approval in two instances.

32. The evidence/observations on record against Noticee, ostensibly exhibit that the failure to take prior approval with respect to change in control that too twice in the assessment of the undersigned cannot be taken leniently and such violation deserves to be adequately penalized. The very purpose of the said provisions is to deter wrong doing and promote ethical conduct in the securities market. The Noticee being a registered intermediary was under a statutory obligation to abide by the provisions of the Stock Brokers Regulations, which it failed to do and thus, calls for appropriate penalty.

33. Noticee has stated that it had stopped working since February 2024 since it was unable to maintain the requisite networth for the Stock Brokers, which has been taken into consideration while imposing penalty upon it.

ORDER

34. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgment of the Hon'ble Supreme Court in ***SEBI vs. Bhavesh Pabari (2019)***5 SCC 90 and in exercise of power conferred upon the undersigned under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, the following penalty is hereby imposed under Section 15HB of the SEBI Act r/w Regulation 26 (xvii) of SEBI (Stock Brokers) Regulations 1992 on the Noticee for violations of the following provisions of Stock Brokers Regulations:

a) Regulation 9(c) of the Stock Brokers Regulations.

Name of the Noticee	Penal provisions	Penalty
Horizon Portfolio Ltd	Section 15HB of the SEBI Act r/w Regulation 26 (xvii) of SEBI (Stock Brokers) Regulations 1992	Rs 2,00,000/- (Rupees Two Lakhs Only)

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

36. The forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

37. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

BARNALI MUKHERJEE Digitally signed by BARNALI MUKHERJEE Date: 2024.09.20 17:17:48 +05'30'

Date: September 20, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**