

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

UNDER SECTION 11(1), 11(4) (b) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (SEBI ACT).

IN THE MATTER OF M/S. CREDENT PORTFOLIO MANAGEMENT PRIVATE LIMITED.

Date of Hearing: March 02, 2012

Appearances:

For Company: 1. Mr. Prakash Shah, Advocate
2. Mr. Prabhakar Kengar, Advocate, and
3. Mr. Mritunjay Kumar, Director of M/s. Credent Portfolio Management Private Limited

For SEBI: 1. Mr. P. K. Bindlish, Chief General Manager
2. Mr. Santosh Kumar Shukla, Joint Legal Advisor
3. Mr. G. Ram Mohan Rao, Dy. General Manager, and
3. Mr. Amitesh Kumar, Asst. Legal Advisor

1. SEBI received a complaint dated March 15, 2010 from an investor viz. Mr. Rajendra S. Rathore, alleging malpractices and misappropriation of funds by Mr. Amaranjay Kumar, director of M/s.Credent Portfolio Management Private Limited. After preliminary inquiry, SEBI *prima facie* found that M/s. Credent Portfolio Management Private Limited and its directors viz. Mr. Mritunjay Kumar and Mr. Amaranjay Kumar, were offering portfolio management services without obtaining requisite registration certificate from SEBI. By an ex-parte ad-interim order dated October 11, 2010, SEBI issued following directions to Credent Portfolio Management Private Limited and its directors viz. Mr. Mritunjay Kumar and Mr. Amaranjay Kumar, pending investigation :
 - a. they were restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities or being associated with the securities market in any manner.
 - b. they were directed not to mobilize funds from the public or offer any portfolio management services, and
 - c. to resolve all pending complaints against them.

2. While the SEBI investigations were on-going, these directions were confirmed vide order dated June 1, 2011. After completion of the investigation, SEBI issued a show cause notice (SCN) dated December 14, 2011 to Credent Portfolio Management Private Limited (“the company”) and its directors viz. Mr. Mritunjay Kumar and Mr. Amaranjay Kumar (herein after collectively called “noticees”) alleging that they had carried out portfolio management services without obtaining registration from SEBI and therefore had contravened section 12(1) of the SEBI Act read with regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993 (Portfolio Managers Regulations). They were called upon to show cause as to why suitable directions under section 11(1), 11(4) (b) and 11B of the SEBI Act including direction of restraining them from accessing the securities market and prohibiting them from buying, selling or dealing in securities for an appropriate period and any other directions as deemed fit and proper, should not be issued against them.
3. The noticees vide their separate letters dated January 2, 2012 replied to the SCN and sought an opportunity of personal hearing. Accordingly, an opportunity of personal hearing was granted to them on March 02, 2012. On the schedule date, the authorized representatives of the noticees appeared before me and made submissions. The company also filed a written submission dated March 02, 2012. Their submissions are as under :
 - a. The company is an AMFI registered mutual fund distributor and, therefore, advising on mutual fund products is inherent in its job. Hence, it often renders advice and distribution as a composite service. Further, AMFI guidelines allow mutual fund distributors to render services which may have close resemblance with portfolio management services.
 - b. The expression ‘portfolio management services’ contained in the web site www.credentinvest.com was on the internal page and that too solely on account of the website developers’ mistake to understand the real requirements and activities of the company. The web content developer did not comprehend the precise import of the business of a mutual fund distributor. While the web content developer was developing contents, he wanted to post it on internal portal to receive the feedback. Inadvertently, he put it on the website. As soon as it was discovered that it was on the web, the same was immediately withdrawn on its own in April 2010 much before SEBI or any client brought it to the company’s notice. Co-incidentally, it happened during mid March up to around April 5, 2010. Further, the company did not acquire/serve a single client in pursuance to the said

web content nor it has launched any portfolio management scheme. Also each page of the website displayed important caution message for the use and benefit of investors “Mutual Fund markets are subject to market risks. Please read the offer documents carefully before investing.”

- c. The dealings of Mr. Amaranjay Kumar with complainant were in his personal capacity. The company was not involved in those dealings. Services provided by Mr. Amaranjay to Mr. Rathore were in the nature of facilitating in executing his trades through the broker CFS Financial Services Pvt. Ltd. (CFS). No decision with regard to buy and sell of securities in the trading account of Mr. Rathore were independently taken by Mr. Amaranjay. Mr. Rathore had authorized Mr. Amaranjay not by way of executing PoA but by mentioning his name in the client registration form (KYC) submitted to CFS for certain activities on his behalf. The statements furnished by Mr. Amaranjay alleged to be indicating performances of the portfolio of Mr. Rathore are the holding statements of Mr. Rathore. This is no way comparable with the performance statement supposed to be furnished by the portfolio manager to its clients. Further, in the statement of CFS recorded on July 07, 2011 on which reliance has been placed by SEBI, CFS has stated that the ‘trading account’ of Mr. Rathore was being managed by Mr. Amaranjay. This suggests that the trading account and not the portfolio of Mr. Rathore was being managed.
- d. The grievance of Mr. Rathore has been resolved to his satisfaction and he has confirmed the same vide his letter dated October 29, 2010 to SEBI. SEBI had conducted investigation against the noticees solely on the basis of the complaint received from Mr. Rathore. Since the said complaint has been resolved way back in October 2010, the cause of action got over in October 2010.
- e. The company never had any demat account and has not taken money directly from any of its clients in its own name with an object to manage funds or portfolio and thereby can not be said to be acting as portfolio management services.
- f. The company has undertaken to remove the words “portfolio Management” from the company’s name and the decision about the new name of the company shall be taken in the next Board Meeting.

- g. The noticees have been restrained from accessing the securities market for more than 16 months and they are deprived of their main source of livelihood. In view of the above submissions, the directions issued vide SEBI orders be revoked immediately.
4. I have carefully considered the SCN, replies of the noticees, oral as well as written submissions and other material on record. I note that the charges levied against the noticees are basically two:
- (a) The noticees solicited general public to invest with them and offered portfolio management services without being registered as a portfolio manager with SEBI.
 - (b) Mr. Amaranjay offered services akin to the portfolio management services to Mr. Rathore without obtaining registration from SEBI.
5. I find that the website of the company at www.credentinvest.com makes very explicit representations to solicit the clients to join its portfolio management activities. Some of the representations are reproduced as under:

“Portfolio Management Services (PMS)

Credent, Portfolio Manager offers discretionary portfolio management services. Credent has a team of experts who carefully take investment decisions based on the clients’ objectives. The Portfolio Management team has a successful track record in the capital market. The team has access to Credent strong Equity Research, and Fundamental & Technical Analysis.

Who is it for?

Our portfolio management service is well suited for high-net worth customers:

- *who are investing in Indian equities*
- *who desire create wealth over longer period*
- *who appreciate a higher level of service*

Highlights of the Credent PMS

Credent provides a highly professional fund management services that is yet flexible to deliver maximum returns to our clients. Here are some highlights of our process:

Professional research brings out the brightest stock and sector ideas for your portfolio.

- *Proactive management means monitoring the operational and stock market performance of all companies in your portfolio regularly.*
- *Prudent risk management practices mean the better downside protection for your portfolio and also help convert paper gains into real profits.*
- *Greater flexibility to hold cash and allocate investments across sectors and adjust for market trends.*

***Benefits of Portfolio Management Service
Professional Management***

The service offers professional management of your equity investments with an aim to deliver consistent return with an eye on risk.

Risk Control

Well defined investment philosophy & strategy acts as a guiding principle in defining the investment universe. We have a very robust PMS software that enables the entire construction, monitoring and the risk management processes.

Convenience

Our Portfolio Management Service relieves you from all the administrative hassles of your investments. We provide periodic reports on the performance and other aspects of your investments.

Constant Portfolio Tracking

We understand the dynamics of equity as an asset class, so we track your investments continuously to maximize the returns.

Transparency

You will get account statements and performance reports on a monthly basis. That's not all; web access will enable you to track all information relating to your investment on daily basis. A password protected web login, will enable your to access details your investment on click of a button. The following portfolio reports are accessible online:

- *Performance Statements*
- *Portfolio Holding Reports*
- *Transactions Statements*
- *Capital Gain/Loss Statements”*

6. I note that the noticees have admitted that the aforesaid representations were on the said website of the company but have submitted that these were on the internal pages of the website and only for few days and that too because of website developers' mistake. I also note that the representations, as alleged, were on the website of the company, though for few days as claimed by the noticees. Though the other contents including the caution message in the website could be intended for mutual fund product/distribution, the above said representations that were on the website till April 2010 clearly suggest that the noticees were offering portfolio management services to public. The contents of the representations further suggest that the same could be possible only with involvement of a person having knowledge of the portfolio management services. The website is admittedly owned by the company and involvement of the noticees in such representation to public can not be ruled out in the facts and circumstances of this case. In my view, the noticees are responsible for the representation made therein. They can not be absolved of the consequences of such representations. Further, the words “Portfolio Management:” suggest that the company was acting as a portfolio manager. I, therefore, find

that the aforesaid representations put forth on the website of the company solicited business of portfolio management services from the general public and offered portfolio management services without the company being registered with SEBI as portfolio manager. Thus, the noticees have violated the provisions of section 12(1) of the SEBI Act read with regulation 3 of SEBI (Portfolio Managers) Regulations, 1993.

7. The noticees have submitted that the services offered by Mr. Amaranjay to Mr. Rathore were in the nature of facilitating Mr. Rathore in executing his trades through the broker CFS in the personal capacity of Mr. Amaranjay. Further, no decision with regard to 'buy' and 'sell' of securities in the trading account of Mr. Rathore were independently taken by Mr. Amaranjay. I find that Mr. Amaranjay has admitted in his statement dated 24/08/2011 that he was authorized to buy and sell shares on behalf of Mr. Rathore. Further, it was his discretion to place order with the broker on behalf of Mr. Rathore. In his reply dated January 02, 2012 Mr. Amaranjay has clarified that these statements should be looked into in totality for its true and correct meaning. He submitted that only discretion he had was to place an order with the broker CFS and not to decide to buy or sell. The decision to buy or sell any share was taken by Mr. Rathore himself and he used to place order as per Mr. Rathore's instructions and authority.
8. I find from the complaint of Mr. Rathore that cheques were issued by him to Mr. Amaranjay for the purchase of shares. Mr. Amaranjay also provided statements having details of purchase and sale of securities to Mr. Rathore. These statements give details of scrip-wise net position and profit on various dates. The noticees have contended that these statements were holding statements and not the statements as statutorily required to be furnished by portfolio manager. The investigation in the matter has found that the business of the company is mutual fund distribution to retail investors. Its income was mainly through commission earned through mutual fund distribution and not from any portfolio management service. The investigation has not found that the company has launched any portfolio management scheme. In my view, the statements provided by Mr. Amaranjay to Mr. Rathore can not conclusively prove that Mr. Amaranjay was rendering portfolio management service to Mr. Rathore. I, therefore, give benefit of doubt to Mr. Amaranjay on this charge.
9. I, however, note that there are certain mitigating factors in this case. Only two complaints against the noticees have come to the notice of SEBI. These complaints have also been resolved to the satisfaction of the complainants. The representations on the website were only for few

days and have already been withdrawn suo moto by the company. The noticees have been undergoing the restraint from accessing the securities market and prohibition from buying, selling or otherwise dealing in securities in any manner and pursuant to the interim order dated October 11, 2010. In my view, the restraints and prohibitions already undergone pursuant to the SEBI orders dated October 11, 2010 and June 01, 2011 are commensurate with the contraventions found as above. Hence, SEBI orders dated October 11, 2010 and June 01, 2011 shall not continue hereafter.

10. However, in the facts and circumstances of this case and in order to protect the interests of the investors and the securities market, certain preventive and remedial directions need to be issued. I, therefore, in exercise of the powers conferred upon me under Section 19 read with Sections 11, 11(4) and 11B of SEBI Act, 1992, hereby issue following directions:

- (a) M/s. Credent Portfolio Management Private Limited and its directors viz. Mr. Mritunjay Kumar and Mr. Amaranjay Kumar shall not solicit or undertake any portfolio management activities, directly or indirectly, in any manner whatsoever without obtaining registration as such from SEBI;
- (b) M/s. Credent Portfolio Management Private Limited and its directors viz. Mr. Mritunjay Kumar and Mr. Amaranjay Kumar shall immediately withdraw and remove advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to the portfolio management activities, if any; and
- (c) M/s. Credent Portfolio Management Private Limited shall immediately remove the words "Portfolio Management" from its name as undertaken by it.

11. A copy of this order shall be forwarded to all the stock exchanges and the depositories for necessary action.

12. This order shall come into force with immediate effect.

DATE: March 30th , 2012
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA