

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER

ORDER

Under Regulation 28(2) read with Regulation 38 (2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 in respect of M/s. Spurt Fincap Ltd. a member the Ludhiana Stock Exchange (LSE) and a stock broker having SEBI registration no. INB 120944137.

1. M/s. Hoffland Finance Ltd. (HFL) and its various other group companies were granted certificate of registrations by the Securities and Exchange Board of India (SEBI) to carry on several securities market intermediaries' activities. Different proceedings were initiated against HFL and its group companies (hereinafter collectively referred to as '*Hoffland Group*') by SEBI for different reasons including that the financial condition of the entire group had deteriorated. During these proceedings, it was *inter alia* noted that the inspections carried out by the Reserve Bank of India into the affairs of HFL had revealed that mobilisation of deposit was one of the main objective of the *Hoffland Group*. Funds were transferred by HFL to Hoffland Share Shoppe Ltd. HFL had accepted security deposit from various parties aggregating to the tune of ₹ 1216.35 lakhs as on March 31, 1997 and the financial position of the entire group had deteriorated. HFL had not been furnishing particulars to SEBI about their deposit mobilisation and its various outfits of *Hoffland Group* were not responding to the notices sent by SEBI.
2. Pursuant to those proceedings, the appropriate directions under section 11B of the SEBI Act were issued to different outfits of the *Hoffland Group* and the respective certificate of registrations granted to certain entities, belonging to the *Hoffland Group*, to act as intermediaries were cancelled by SEBI in terms of the orders passed by SEBI on different dates as following-
 - (a) By order dated January 29, 1998, SEBI had withdrawn the permission granted to HFL to carry on the portfolio management activities.
 - (b) By order dated March 03, 1998, the certificate of registration granted to HFL, (member of Bangalore Stock Exchange and Jaipur Stock Exchange) to act as a stock broker was suspended by SEBI for a period of six months applicable on all

the stock exchanges where it was member as it had indulged in creation of false market in the scrip of JVG Departmental Stores Ltd.

- (c) By order dated September 09, 1998, SEBI had cancelled the certificate of registration granted to HFL to carry on the activities of a Category II merchant banker. This order was passed on the basis of the finding that the financial position of HFL had deteriorated to such an extent that its continuance as merchant banker was not in the interest of investors.
- (d) By order dated August 25, 1999, SEBI cancelled the certificates of registration granted to HFL (member of Bangalore Stock Exchange and Jaipur Stock Exchange having SEBI registration no. INB 080909130 and INB 160909133, respectively), to act as a stock broker since it had shown utter disregard in maintaining high standards of integrity, promptitude and fairness in the conduct of its business as a stock broker and its financial position had deteriorated and its continuance as a stock broker was found to be not in the interests of investors and other stock brokers.
- (e) By order dated January 29, 1998, the certificates of registration to act as stock broker granted to M/s. Hoffland Share Shoppe Ltd., member of Delhi Stock Exchange (DSE) and Madras Stock Exchange (MSE) was suspended for a period of six months applicable on all the stock exchanges where it was member.
- (f) By order dated August 25, 1999, SEBI cancelled the certificates of registration granted to M/s. Hoffland Share Shoppe Ltd. (member of Delhi Stock Exchange and Madras Stock Exchange having SEBI registration no. INB 050905737 & INB 040905730 respectively), since it had shown utter disregard in maintaining high standards of integrity, promptitude and fairness in the conduct of its business as a stock broker and its financial position had deteriorated and its continuance as a stock broker was found to be not in the interests of investors and other stock brokers.
- (g) By order dated March 08, 2011, the certificate of registration granted to M/s. Kardam Financial Services Private Limited [member of Cochin Stock Exchange Limited] having SEBI registration no. INB 090917434 to act as a stock broker was cancelled by SEBI since it was not a '*fit and proper person*'.
- (h) By order dated March 08, 2011, the certificate of registration granted to M/s. Bhartendu Financial Services Private Limited [member of Bombay Stock Exchange Limited] having SEBI registration no. INB 010960839 to act as a stock broker was cancelled by SEBI since it was not a '*fit and proper person*'.

- (i) By order dated March 08, 2011, the certificate of registration granted to M/s. Rakesh Mishra [member of Uttar Pradesh Stock Exchange Limited] having SEBI registration no. INB 100945318 to act as a stock broker was cancelled by since it was not a '*fit and proper person*'.
 - (j) By order dated March 08, 2011, the certificate of registration granted to M/s. Suresh Kumar [member of Uttar Pradesh Stock Exchange Limited] having SEBI registration no. INB 100943418 to act as a stock broker was cancelled by SEBI since it was not a '*fit and proper person*'.
 - (k) By order dated March 08, 2011, the certificate of registration granted to M/s. Leaprofin Securities Limited [member of Over the Counter Exchange of India] having SEBI registration no. INB 200559331 to act as a stock broker was cancelled by SEBI since it was not a '*fit and proper person*'.
 - (l) By order dated November 29, 2001, the certificate of registration granted to M/s. Leaprofin Securities Limited [member of National Stock Exchange (NSE)] having SEBI registration no. INB 230559335 to act as a stock broker was cancelled by SEBI since NSE had expelled it from the membership for its failure to fulfill its pay-in obligations.
 - (m) By order dated November 29, 2001, the certificate of registration granted to M/s. Broadline Capfin Services Ltd., [member of National Stock Exchange (NSE)] having SEBI registration no. INB 230837934 to act as a stock broker was cancelled by SEBI since NSE had expelled it from the membership for its failure to fulfill its pay-in obligations.
 - (n) By order dated November 29, 2001, the certificate of registration granted to M/s. *Vikrant Capital Services Pvt. Ltd.*, [a member of Mangalore Stock Exchange] having SEBI registration no. INB 140957933 to act as a stock broker was cancelled by SEBI.
3. During 1998, SEBI received a reference dated September 11, 1998 from the office of the Additional Deputy Commissioner of Police, Crime Branch, New Delhi in the context of an FIR under section 420/ 406/ 409/120-B of the Indian Penal Code against *Hoffland Group* of companies. It was informed in the said reference that during investigations by the Police Authorities, Mr. B.B. Sharma, Chairman-cum-Managing Director of the *Hoffland Group* of companies was arrested and he had disclosed the details of several stock exchange membership held by him in different names as described in the said reference. The aforesaid letter further stated that the amount utilized for the purpose of the stock

exchange memberships was diverted from the money collected from the public by the Hoffland Group.

4. It was further informed that Mr. B.B. Sharma had also revealed that he had floated 32 companies/firms including M/s. Spurt Fincap Ltd. Thereafter, SEBI undertook investigations in the matter of *Hoffland Group* to *inter alia* find nexus and the links, if any, between various broking entities with the said group. The investigation *prima facie* revealed that the M/s. Spurt Fincap Ltd. a SEBI registered stock broker and member the Ludhiana Stock Exchange (LSE) having SEBI registration no. INB 120944137 had purchased the membership of LSE through the funds provided by the *Hoffland Group* during the year 1996. It was also *prima facie* revealed that M/s. Spurt Fincap Ltd. was associated/ linked with the *Hoffland Group* and it was financially unsound. It was also observed that as on October 31, 2007, a sum of ₹ 5000/ was due from M/s. Spurt Fincap Ltd. towards SEBI turnover fees, which it had failed to pay.
5. In view of the above observations and findings of the investigations, it was alleged that the M/s. Spurt Fincap Ltd. is not a “*fit and proper person*” for carrying on the business of a stock broker and has violated the provisions of regulations 5(e), 5A, 6A(a) and 6A(d) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as “the Stock Brokers Regulations”) and regulations 3(1) (a), 3(2)(g) and 3(2)(h) of the SEBI (Fit and Proper Person Regulations) 2004 (*since repealed*) read with Schedule II and regulations 27 and regulation 38 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “the Intermediaries Regulations”) and proceedings under the Intermediaries Regulations were initiated against it .
6. The Designated Authority (DA) appointed in the said proceedings submitted his report dated January 30, 2012, wherein he gave the following findings:
 - (i) M/s. Spurt Fincap Ltd. has claimed that it had paid the fees of ₹5100/ to SEBI on June 02, 2008. Since it had furnished copies of demand draft no. 058828 dated June 02, 2008, LSE letter dated June 04, 2008 to SEBI through which the said demand draft was sent and SEBI letter dated November 05, 2008 whereby SEBI had issued no objection to it for sale/transfer of its LSE ticket, the DA has given M/s. Spurt Fincap Ltd. the benefit of doubt on the allegation of failure to pay SEBI's turnover fees.

- (ii) M/s. Spurt Fincap Ltd. can be declared as a person who is neither fit nor proper as it is clear that it purchased LSE membership ticket from the funds of *Hoffland Group*.
 - (iii) M/s. Spurt Fincap Ltd. cannot be treated as "*fit and proper person*" as it does not have the required financial integrity.
7. Based on the facts and circumstances found by him in his Report , the DA recommended the cancellation of certificate of registration granted to M/s. Spurt Fincap Ltd., in terms of regulation 5(e) and 5A of the Stock Brokers Regulations read with regulations 27 and 38 and Schedule II of the Intermediaries Regulations.
8. After considering the Report, a Show Cause Notice (SCN) dated February 07, 2012 was issued to M/s. Spurt Fincap Ltd. (hereinafter referred to as "*the Noticee*") in terms of regulation 28(2) of the Intermediaries Regulations enclosing therewith a copy of the Report of the DA. The SCN called upon the Noticee to show cause as to why the appropriate penalty including cancellation of registration as recommended by the DA should not be imposed on it. Since the Noticee did not submit its reply to the SCN within stipulated time, a reminder letter dated April 11, 2012 was sent to the Noticee advising it to file its reply to the SCN. The Noticee, vide letter dated April 13, 2012, filed its reply to the SCN. In its reply, the Noticee had also requested for opportunity of personal hearing in the matter which was granted to it before me on November 23, 2012 and Mr. Sanjay Bakshi, Managing Director of the Noticee appeared before me on behalf of the Noticee.
9. The Noticee has, *inter alia* submitted the following :
- (i) The Managing Director of the Noticee was a consultant for stock market operations to Mr. B B Sharma, Chairman of *Hoffland Group*. In 1996, the Noticee decided to start its own stock broking business and purchased a membership ticket at LSE. Since the relations of the Managing Director of the Noticee were extremely personal and good with the Chairman of *Hoffland Group*, the Noticee was offered a soft - interest free loan for start of its business operations. The Noticee received funds from *Hoffland Group* in June 1996 after its incorporation and invested the same for purchase of membership ticket of LSE. The Noticee started business on LSE from 1996 and catered to a large number of clients, including *Hoffland Group* who continued to trade in shares through the Noticee making use of expertise of its Managing Director.

- (ii) Suddenly, in December 1997, the business of *Hoffland Group* nose-dived and came to a virtual standstill. The Managing Director of the Noticee was a personal guarantor to two investors i.e. Mrs. Suvira Mehta and Mrs. Pushp Lata who had invested their moneys in the *Hoffland Group*. On 27th March 1998, Chairman of *Hoffland Group* wrote a letter to the Noticee requesting it to pay off the loan liabilities and share loss of *Hoffland Group* and adjust the advance given against the same. Mr. Sharma requested Mr. Sanjay Bakshi, Managing Director of the Noticee, to pay off these loans personally on behalf of *Hoffland Group*. Accordingly, this was done by the Mr. Sanjay Bakshi. It is submitted that because of this reason, instead of the Managing Director putting in his own money into the Noticee, had to treat the amount received from *Hoffland Group* as own funds, due to the financial adjustments carried out on request of Mr. BB Sharma.
- (iii) Mere the fact that the funds had come from *Hoffland Group* does not prove that the Noticee was the front company of *Hoffland Group*. It is submitted that no director, firm, company or owner of any firm or company of *Hoffland Group* has ever held any shares in the Noticee. Thus, the Noticee is not connected with the *Hoffland Group* as alleged. The Noticee was not financed by *Hoffland Group* and they never ever had any control, direct or indirect, on the working of the Noticee. The shareholders and directors of the Noticee and *Hoffland Group* are independent individuals and not related to any member of the *Hoffland Group*. The Noticee, besides the *Hoffland Group*, had other clients who were responsible for their businesses. The linking of defaults of *Hoffland Group* to the Noticee is totally unjustified.
- (iv) The present case against the Noticee is based on the reference relating to prosecution case against *Hoffland Group*. It is submitted that the affairs of the Noticee are independent and case of any other company has no bearing on its working. The Noticee is filing its own returns which are separate from the group company and it had never been associated by any other Government Department with *Hoffland Group*. Further, the Economic Offences Wing of the Police had given a clean chit to the Noticee on March 13, 2000.
- (v) It is wrong to allege that the Noticee is financially unsound and doubt the financial integrity of the Noticee. No reason has been given in writing to the Noticee for treating the Noticee as an unfit or improper person. It is not true to allege that the Noticee is not a '*fit and proper person*'.

10. During the personal hearing on November 23, 2012, the Managing Director of the Noticee submitted that the funds in question were received by the Noticee from *Hoffland Group* as consideration for providing financial advisory services. He was advised to submit documentary evidence such as Income Tax returns for the financial years 1996-97, 1997-98 and balance sheet for the financial year 1996-97, 1997-98, evidencing such income as claimed. Vide letter dated November 30, 2012 received by SEBI on December 04, 2012, the Noticee filed copies of acknowledgment of Income Tax Returns filed by it for the Assessment Years 1997-98 and 1998-99 and the copies of its balance sheet as on March 31, 1998.
11. I have carefully considered the Report, the SCN, the written and oral replies of the Noticee and other relevant material available on record. Before dealing with the charges alleged against the Noticee, it is necessary to refer to the regulations that are relevant and applicable in this case. The said regulations are reproduced hereunder :-

Stock Brokers Regulations

' Consideration of application

5. The Board shall take into account for considering the grant of a certificate all matters relating to buying, selling, or dealing in securities and in particular the following, namely, whether the stock broker-

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.....
(e) is a fit and proper person.'

(Regulation 5A before Amendment on May 26, 2008)

'Applicability of the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 -

5A. *The provisions of the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 shall, as far as may be, apply to all applicants or the stock brokers, sub brokers, trading members and clearing members under these regulations.'*

(Regulation 5A after Amendment on May 26, 2008)

'Criteria for fit and proper person

5A. For the purpose of determining whether an applicant or the stock broker, sub broker, trading member and clearing member is a fit and proper person, the Board may take into account the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.'

'Condition of registration

6A.(1) Any registration granted by the Board under regulation 6 shall be subject to the following

conditions, namely-

(a) the stock broker holds the membership of any stock exchange;

'Action on inspection or investigation report.'

23. *The Board shall after consideration of inspection or investigation report take such action as it may deem fit and appropriate including action under Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 , Chapter VI A of the Act or section 24 of the Act. '*

'Liability for action under the Enquiry Proceeding Regulations

27. *A stock broker or 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 -*

.....

.....

(iv) has been found to be not a fit and proper person by the Board under these or any other regulations.'

Criteria for Fit and Proper Persons Regulations, 2004 (since repealed)

' Criteria for determining a 'fit and proper person'

3.(1) For the purpose of determining as to whether an applicant or the intermediary seeking registration under any one or more of the relevant regulations is a 'fit and proper person', the Board may take account of any consideration as it deems fit, including but not limited to the following criteria –

(a) financial integrity;

(2) A person shall not be considered as a " fit and proper person" for the purpose of grant or renewal of certificate to act as an intermediary or to continue to act as an intermediary under any one or more of the relevant regulations, if he incurs any of the following disqualifications -

(b) any other reason, to be recorded in writing by the Board, which in the opinion of the Board, renders such applicant or the intermediary, or its whole time director or managing partner unfit to operate in the capital market.'

Intermediaries Regulations

' Cancellation or suspension of registration and other actions

23. *Where any person who has been granted a certificate of registration under the Act or regulations made thereunder-*

(a). fails to comply with any conditions subject to which a certificate of registration has been granted to him;

(b). contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;

the Board may, without prejudice to any action under the securities laws or directions, instructions or

circulars issued thereunder, by order take such action in the manner provided under these regulations.'

'Action in case of default

27. After considering the representations, if any, of the noticee, the facts and circumstances of the case and applicable provisions of law or directions, instructions, circulars administered by the Board, the designated authority shall submit a report, where the facts so warrant, recommending -

- (i) suspension of certificate of registration for a specified period;*
 - (ii) cancellation of certificate of registration;*
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Repeal and Saving

38. (1) With effect from publication of these regulations in the Official Gazette –

- (a) the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and imposing Penalty) Regulations, 2002; and*
- (b) the Securities and Exchange Board of India (Criteria for Fit and Proper Persons) Regulations, 2004 shall be repealed.*

(2) Notwithstanding such repeal, anything done or any action taken under those regulations including an enquiry commenced or notice issued under the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and imposing Penalty) Regulations, 2002, before the publication of these regulations in the Official Gazette, shall be deemed to have been done or taken or commenced under the corresponding provisions of these regulations.

(3) After the repeal of the regulations referred to in sub-regulation (1), any reference thereto in any regulation, guidelines, circulars shall be deemed to be a reference to Chapter V and Schedule II, respectively.'

Schedule II

' Criteria for determining a 'fit and proper person'

For the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer and the key management persons by whatever name called –

- (a) integrity, reputation and character;*
- (b) absence of convictions and restraint orders;*
- (c) competence including financial solvency and networth.'*

12.I note that on June 22, 1996 the Noticee had received two payments in its account from the entities belonging to the Hoffland Group i.e. ₹ 8, 30,000 from the account of M/s. Hoffland

Financial Services and ₹ 8,00,000 from the account of M/s. Mail Order Share Shoppe. I further note that on June 24, 1996 the Noticee had paid ₹ 13,75,000 through following two Demand Drafts towards purchase of the membership ticket of LSE from M/s. Classic International Ltd. –

Date	DD No.	Amount(₹)	Issued by	In Favour of
24.06.1996	410068	4,75,000	PNB, Rajouri Garden	Classic International Ltd.
24.06.1996	410069	9,00,000	PNB, Rajouri Garden	Classic International Ltd.

13. The Noticee has not disputed the above payment to Classic International Ltd. for the purchase of LSE membership in 1996. The DA has observed that the Noticee has, time and again, made contradictory statements with regard to the receipt of above monies on June 22, 1996 from the *Hoffland Group* entities towards purchase of LSE membership. On the one hand the Noticee claimed, during the investigation, that it had used its own funds for purchase of LSE membership, but when confronted on the basis of the evidence that the above funds were transferred to the account of the Noticee from the accounts of the *Hoffland Group* entities, it changed its stand that the said funds were received from the *Hoffland Group* entities as unsecured interest free loan repayable in five years. I further note that during proceedings before the DA the Noticee claimed that it acquired LSE membership by '*using the funds of directors. The directors had utilised their sources to bail out two loan creditors of Hoffland Group and thereby stepped into their shoes with respect to Hoffland Group.*' In its reply to the SCN, the Noticee has submitted that in 1996, it had received the above funds as soft interest free loan from the *Hoffland Group* and on request of Mr. B. B. Sharma vide his letter dated March 27, 1998, Mr. Sanjay Bakshi, the Managing Director of the Noticee carried out financial adjustments to treat the amount received from *Hoffland Group* as own funds and paid off the loans given by two creditors namely, Mrs. Suvira Mehta and Mrs. Pushp Lata to the *Hoffland Group*.
14. I observe that the balance sheet of the Noticee for the period ended March 31, 1997 (for the financial year 1996-97) does not indicate that any such loan was received by the Noticee from the *Hoffland Group* on June 22, 2006. I, therefore, find that the Noticee has failed to establish its claim, on the basis of any document that in all probability should be

available in possession of the Noticee, that the above amounts were received by it from *Hoffland Group* as interest free unsecured loan. The Noticee has not given any evidence about its claim of subsequent financial adjustment by its Managing Director during 1998 on the request of Mr. B. B. Sharma as claimed by the Noticee and Mr. Sanjay Bakshi, its Managing Director.

15. During personal hearing Mr. Sanjay Bakshi, Managing Director of the Noticee again took a different stand and claimed that the funds in question were received by the Noticee from *Hoffland Group* as consideration towards financial advisory services provided by him. He has not produced any document in support of this claim either. The copies of acknowledgment of Income Tax Returns filed by the Noticee for the Assessment Years 1997-98 and 1998-99 and the copies of its balance sheet as on March 31, 1998 do not suggest the receipt of the above fund on June 22, 2006 by the Noticee as financial services advisory fees income as claimed by it. I am, therefore, unable to accept this contention of the Noticee.
16. I note that the Noticee has not been able to prove any of its claims made during the investigation proceedings, the proceedings before the DA and these proceedings. It has been shifting its stands without producing any cogent evidence in support. I find that different stands taken by the Noticee are afterthought and that the Noticee had purchased the LSE membership in 1996 from the fund provided by the *Hoffland Group*. I, therefore, have no reasons to differ with the findings and observations of the DA as contained in his Report.
17. It is undisputed fact that *Hoffland Group* had many stock broking outfits having SEBI registration with regard to membership of several stock exchanges at the relevant time that had significant experience and exposure in the capital markets. I, therefore, agree with the observations and findings of the DA that had the Noticee not been associated/linked with *Hoffland Group*, there was no reason for the *Hoffland Group* entities to execute their trades through the Noticee instead of giving business to their own stock broking outfits.
18. I further note that Mr. R. L. Vaid, father of Mr. Sanjay Bakshi was an advisor to the *Hoffland Group* and was also on the Board of HFL prior to October 1995. In my view, the facts and circumstances of this case specially the funding by *Hoffland Group* entities to the Noticee without any documentation and commitment of return from it, non disclosure of receipt of the funds in the balance sheet or Income Tax Returns of the Noticee, shifting stands of the Noticee, etc. lead to the only reasonable inference that *Hoffland Group* was

using the Noticee as its front entity to obtain LSE membership and on June 22, 1996 the aforesaid money was transferred by *Hoffland Group* to the Noticee solely for the purpose of purchasing the LSE membership. The statement of Mr. B. B. Sharma before the Economic Offences Wing, Crime Branch, Delhi that he had floated 32 companies/firms including the Noticee further corroborates such inference drawn on the basis of the facts and circumstances of this case as found in the Report of the DA. I, therefore, agree with the findings of the DA that the Noticee acted in collusion with *Hoffland Group* in obtaining membership of LSE. I further note that the networth of the Noticee as on March 31, 1997 was only ₹ 7.54 lakhs, whereas it had paid ₹ 13, 75,000 for purchase of LSE membership. I, therefore, find that during 1996 when it acquired LSE membership and SEBI registration the Noticee was not financially sound and its financial integrity was doubtful. Thus, it is established that the Noticee does not fulfill the basic benchmark such as financial integrity, good reputation, etc. to be considered as a 'fit and proper person'.

19. I note that the matter investigated by the Economic Offences Wing, Crime Branch, Delhi is different and independent from the matter in issue in the present proceedings. Even if the Economic Offences Wing has given clean chit to the Noticee with regard to the alleged offences of the *Hoffland Group* under the provisions of the Indian Penal Code, the Noticee cannot be exonerated for its non compliances / violations of the securities laws which is the matter for determination in the present proceedings. I, therefore, do not agree with the contentions of the Noticee in this regard.
20. In my view, the requirement with regard to compliance of '*fit and proper*' criteria provided in the Fit and Proper Persons Regulations, 2004 or in Schedule II of the Intermediaries Regulations is *sine qua non* for the grant of registration as an intermediary as well as for continuance of registration of the intermediary. Regulation 5(e) read with regulation 5A of the Stock Brokers Regulations, Fit and Proper Persons Regulations, 2004 and Schedule II of the Intermediaries Regulations mandate that the stock broker must be a '*fit and proper person*'. The Fit and Proper Persons, Regulations, 2004 were repealed by the Intermediaries Regulations with effect from May 26, 2008. Chapter V and Chapter VI of the Intermediaries Regulations came into force with effect from May 26, 2008. In terms of regulation 37 of the Intermediaries Regulations, regulation 5A has been substituted in the Stock Brokers Regulations with effect from May 26, 2008. In terms of regulation 38 of the Intermediaries Regulations, the '*fit and proper person*' criteria specified in Schedule II thereof are in force and applicable with effect from May 26, 2008. In the present case, till May 26,

2008 the Noticee was to be governed by the '*fit and proper person*' criteria prescribed in the Fit and Proper Persons, Regulations, 2004. After its repeal on May 26, 2008, the '*fit and proper*' criteria prescribed in Schedule II is applicable to the Noticee.

21. Regulation 3(2) (a) of the Fit and Proper Persons Regulations, 2004 (*since repealed*) requires the intermediary to have and maintain financial integrity. Regulation 3(2) (h) of the Fit and Proper Persons, Regulation, 2004 provided a residuary power of the Board to consider any other disqualification of the intermediary by recording the reasons in writing. I note that the criteria prescribed in Schedule II of the Intermediaries Regulations are wide and not limited to the specified factors. Schedule II prescribes the principle based criteria and empowers the Board to consider the factors like integrity, reputation and character, absence of conviction, restraint orders, competence including financial solvency and networth. In my view, even after repeal of Fit and Proper Persons Regulations, 2004 the factors prescribed therein could also be the guiding factors for determining the integrity, reputation and character and competence including financial solvency and networth of the intermediaries.
22. In the present case, as found herein above, the Noticee had acted in collusion with *Hoffland Group* in obtaining membership of LSE and is associated /linked with the *Hoffland Group*. Since the certificates of registration granted to the *Hoffland Group* by SEBI had already been cancelled for the reasons such as their financial position had deteriorated so that their continuance in the securities market was not in the interest of investors, their membership was expelled by the concerned stock exchange as they were not able to fulfill their pay-in obligations, etc. If the *Hoffland Group* outfits did not have financial integrity, financial competence and capacity/character to continue their respective registration certificates, they cannot be allowed to undertake stock broking activities by purchasing the stock exchange membership through another entity such as the Noticee. Further, the Noticee was not having financial competence to obtain the stock broker registration or continue as such. Thus, in my view, the Noticee cannot be treated as '*fit and proper person*' within the benchmark prescribed in regulation 3(2) (a) and 3(2)(h) of the Fit and Proper Persons, Regulations, 2004 as well as Schedule II of the Intermediaries Regulations, 2008. I, therefore, find that the Noticee is not a '*fit and proper person*' for the grant and continuance of certificate of registration as a stock broker. Thus, the Noticee had violated regulation 5(e) and regulation 5A of the Stock Brokers Regulations read with Fit and Proper Persons, Regulations, 2004 and Schedule II read with regulation 38(3) of the Intermediaries

Regulations. In view of the same, the Noticee is liable for action under section 12(3) of the SEBI Act and regulations 23 and 27(iv) of the Stock Brokers Regulations read with regulations 23, 27, 28 and 38 of the Intermediaries Regulations.

23. I, therefore, in exercise of powers conferred upon me under section 12(3) read with section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 28 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration granted to the stock broker, M/s Spurt Fincap Ltd. Member, Ludhiana Stock Exchange Limited and having SEBI registration no. INB 120944137.
24. This Order shall come into force immediately on expiry of twenty one days from the date of this order.

RAJEEV KUMAR AGARWAL

DATE: March 25 , 2013

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA