

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under section 12 (3) of SEBI Act, 1992 read with Regulation 28 (2) of SEBI (Intermediaries) Regulations 2008 against M/s Mudra Bullions Private Limited (SEBI Registration No. INE 261344936) (PAN: AAFCM3220N)

Date of Personal Hearing : March 20, 2013

Appearances: -

For MBPL:

Mr. Karul Shah (Director MBPL)
Mr. S. H. Bohra (Advocate representing MBPL)

For SEBI:

Mr. Biju S. (JLA)
Mr. A. S. Mithwani (DGM)
Ms. Vanya Singh (ALA)
Mr. Balbir Singh (AGM)
Ms. Tenzin Tsering (ALA)

FACTUAL BACKGROUND

1. Mudra Bullions Private Limited (hereinafter referred to as “**MBPL**”) had applied for registration as trading member of currency derivative segment in MCX Stock Exchange Limited (hereinafter referred to as “**MCXSX**”) and the said application was forwarded to SEBI for registration on March 2, 2009. As a part of the registration process in SEBI, previous records were checked and it was found that the names of the directors of MBPL, namely, Mr. Karul P Shah (hereinafter referred to as “**Mr. Shah**”) and Mr. Anand B Hundia (hereinafter referred to as “**Mr. Hundia**”), appeared therein. Thereafter, SEBI vide email dated June 15, 2009 sought confirmation from MCXSX regarding whether Mr. Shah and Mr. Hundia were associated with the matter of Pyramid

Saimira Theatre Ltd. (hereinafter referred to as “**PSTL**”). In the matter of PSTL, SEBI vide order dated April 23, 2009 restrained certain entities. Pursuant to the clarification sought by SEBI, MCX SX vide letter dated June 18, 2009 forwarded the undertakings dated June 16, 2009 of Mr. Shah and Mr. Hundia, to SEBI. The said undertakings by Mr. Shah and Mr. Hundia, *inter alia*, mentioned that they were not associated with PSTL in any capacity and that there was/ is no adverse action whatsoever, such as enquiry / adjudication (penalty imposed)/ suspension/ cancellation/ prosecution/ debarring from capital market, initiated/ pending/ completed against them. SEBI granted registration to MBPL on July 13, 2009 based on these undertakings. MBPL commenced trading on the exchange on September 1, 2009. However, while inspecting MBPL, MCX SX found that Mr. Shah and Mr. Hundia, directors and key management persons of MBPL, were in fact debarred in their individual capacities from dealing in the securities market by SEBI vide *ex-parte* interim order dated April 23, 2009 passed in the matter of PSTL. The same was informed to SEBI vide its letter dated July 21, 2011.

2. Thus, the first allegation vis-à-vis MBPL is that it had failed to furnish proper/correct information at the time of submission of its application for registration to SEBI, thereby violating section 15A(a) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with regulation 27(xv) of SEBI (Stock Brokers and Sub-brokers) Regulation, 1992 (hereinafter referred to as “**Broker Regulations**”). The said alleged violation also implies that MBPL was not a fit and proper person as specified in Schedule II of Regulation 7 of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the “**Intermediaries Regulations**”) at the time when it sought registration as an intermediary from SEBI.
3. The second allegation vis-à-vis MBPL is that having engaged in two businesses i.e. trading in Bullions & Metals on the Multi Commodity Exchange of India Ltd. (“**MCX**”), and trading in Currency Derivatives on MCX SX, under the same company, it has violated rules 8(1)(f) and 8(3)(f) of Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as “**SCR Rules**”).

This allegation is based on statements in the balance sheet of MBPL which stated that *"the company is engaged in 2 business segments namely Trading in Bullions & Metals on MCX, Trading in Foreign currency on MCX-SX"*.

4. In view of the apparent violations of law, SEBI vide order dated February 24, 2012 under section 19 of SEBI Act read with regulation 24 of the Intermediaries Regulations appointed the Designated Authority (hereinafter referred to as "**DA**") to enquire into the alleged violation of section 15A(a) of SEBI Act read with regulation 27(xv) of Broker Regulations, and rule 8(1)(f) and 8 (3) (f) of the SCR Rules. Subsequently, Show Cause Notice bearing No. EAD-5/PG/AK/19347/2012 dated August 29, 2012 was issued to MBPL under regulations 25 and 38 of the Intermediaries Regulations to show cause as to why further action under regulation 27 of Intermediaries Regulations should not be taken against it. MBPL submitted its reply to the said Show Cause Notice vide letter dated September 13, 2012.
5. The DA, vide his report dated September 28, 2012 has stated that the violation of section 15A(a) of SEBI Act read with regulation 27(xv) of Broker Regulations by MBPL leading it to not being a fit and proper person as specified in Schedule II read with Regulation 7 of Intermediaries Regulations, as well as violation of rules 8(1)(f) and 8(3)(f) of SCR Rules by MBPL, stand established. The DA has recommended that the certificate of registration of MBPL be cancelled in terms of regulation 27 (ii) of the Intermediaries Regulations.
6. Subsequently, a Show Cause Notice No. SEBI/MIRSD1/ASM/BS/25447/12 dated November 12, 2012 (hereinafter referred to as "**SCN**" or "**show cause notice**") was issued to MBPL to show cause why action should not be taken against it as recommended by the DA or higher penalty should not be imposed as deemed fit by the competent Authority. A copy of the report of the DA was also forwarded to it along with an advice to file reply within 21 days of the receipt of the SCN. MBPL submitted its replies to the abovementioned SCN vide its letters dated November 29, 2012 and December 21, 2012.

7. Considering the replies, an opportunity of personal hearing in the matter was also granted to MBPL on March 20, 2013. The hearing was attended by Mr. Shah along with advocate Mr. S.H. Bohra representing MBPL, wherein submissions were made in line with earlier replies submitted to SEBI by MBPL.
8. The primary contentions of MBPL in its written replies as well as oral submissions made at the time of the hearing before me have been as follows:-
 - (i) The two undertakings dated June 16, 2009 submitted by its directors Mr. Karul Popatlal Shah and Mr. Anand B. Hundia were given in good faith since membership was applied in the name of MBPL and MBPL (being a separate legal entity) was not connected with Advance Finstock Pvt.Ltd. and the directors were not connected or concerned with any of the activities of PSTL or Mr. Nirmal Kotecha group.
 - (ii) The prohibition dated 23-04-2009 was issued against different company and not against MBPL. Even after filing of undertaking on 20-06-2009, they were allowed to continue the business by SEBI. The company was hopeful of getting the PSTL matter resolved before SEBI/SAT.
 - (iii) An appeal was filed before SAT against SEBI order dated July 05, 2010 (confirmatory order further to SEBI order dated April 23, 2009). Hon'ble SAT vide order dated June 07, 2011 disposed off the appeal in terms of order passed by tribunal in Appeal No. 98 of 2010 decided on September 08, 2010 whereby operations of the SEBI order dated April 23, 2009 were stayed *qua* the appellant.
 - (iv) It also stated that the SCN-cum- ex-parte interim order dated April 23, 2009 was issued to Mr. Karul Shah and Mr. Anand Hundia in the capacity of being directors of Advance Finstock Pvt Ltd and not in capacity being directors of MBPL.

- (v) With regard to the second allegation that MBPL engaged in two businesses i.e. trading in Bullions & Metals on the MCX, and trading in Currency Derivatives on MCX-SX, under the same company, in violation of rules 8 (1) (f) and 8 (3) (f) of the SCR Rules, MBPL submitted that it is true that it is engaged in two business segments namely Trading in bullions & metal on MCX and trading in Currency Derivatives on MCX-SX, but only for "namesake". It also stated that there is not much trading in foreign currency/currency derivatives on MCX-SX and it is not engaged in fund based activities and has not violated rules 8(1)(f) and 8(3)(f) of SCR Rules.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have considered the report of the Designated Authority, the show cause notice issued to MBPL, replies and submissions of MBPL and other material available on record.
10. The provisions of law viz. section 15A(a) of SEBI Act, regulation 27(xv) of the Broker Regulations and rule 8 (1) (f) of the SCR Rules, the contravention of which has been alleged in the show cause notice, are reproduced below:-

Section 15A(a) of SEBI Act

"15A. Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less."

Regulation 27 of Broker Regulations

"Liability for action under the Enquiry Proceeding Regulations.

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—

...

(xv) commits violation of any of the provisions for which monetary penalty or other penalties could be imposed.”

11. Rule 8(1)(f) of SCR Rules is as stated hereunder:-

Qualifications for membership of a recognised stock exchange.

8. The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

(1) No person shall be eligible to be elected as a member if—

...

(f) he is engaged as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business :

Provided *that no member may conduct business in commodity derivatives, except by setting up a separate company which shall comply with the regulatory requirements, such as, networth, capital adequacy, margins and exposure norms as may be specified by the Forward Market Commission, from time to time.”*

12. Issue pertaining to the alleged violation of section 15A (a) of the SEBI Act read with regulation 27 (xv) of the Broker Regulations: With respect to the alleged violation of section 15A (a) of the SEBI Act I note that the undertakings dated June 16, 2009 furnished by MBPL mention, *inter alia*, that its directors Mr. Shah and Mr. Hundia were not associated with PSTL in any manner and that there was no adverse action pending or completed against them. In this regard, I note that SEBI's ex-parte interim order dated April 23, 2009 in the matter of PSTL expressly directed Mr. Shah and Mr. Hundia, amongst others, not to buy, sell or deal in the securities market, till further

directions. The relevant portion of the SEBI order dated April 23, 2009 is reproduced below:-

"9. The following persons/ entities and their proprietors/ partners/ directors who, as per the investigation carried out so far, prima facie appear to have carried out suspicious banking transactions and have channeled these funds either directly or indirectly in the stock markets, are directed not to buy, sell or deal in the securities market including in Initial Public Offerings, in any manner, either directly or indirectly, till further directions:

SR. No.	NAME	BANK	BRANCH	BANK ACCOUNT NO.	NAME OF PROPRIETOR/DIRECTOR	PAN NO.
2	ADVANCE FINSTOCK PVT LTD.	AXIS BANK	PALANPUR, GUJARAT	256010200005289	ANAND HUNIA/POPATLAL SHAH/SANJAY HUNDIA/RAJESH HUDIA, KARUL SHAH	

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13. The directions contained in SEBI's order dated April 23, 2009 were confirmed vide SEBI's order dated July 5, 2010. Thus, it is clear that Mr. Shah and Mr. Hundia were under direction of debarment from the securities market from April 23, 2009 till the time that SEBI's directions were stayed *qua* the appellants vide the order of the Securities Appellate Tribunal dated June 7, 2011 in SAT Appeal No. 38 of 2011 in the matter of Advance Finstock Pvt. Ltd. and Ors. v. SEBI. Therefore, at the time of furnishing the undertakings dated June 16, 2009, Mr. Shah and Mr. Hundia were debarred from buying, selling or dealing in the securities market in any manner, either directly or indirectly, till further directions. In view of the foregoing, it is clear that MBPL furnished false undertakings to SEBI vide its letters dated June 16, 2009 in what appears to be an attempt to secure certificate of registration as trading member in the currency derivatives segment in complete disregard of SEBI's order dated April 23, 2009.

14. By making wrong submissions in the declarations, MBPL had deliberately hidden the correct information that its directors were actually debarred from operating in the securities market. This is tantamount to non-submission of information resulting in violation of section 15A (a) of the SEBI Act for which monetary penalty can be imposed, and therefore, the certificate of registration of the concerned broker is liable to be cancelled under regulation 27 (xv) of the Broker Regulations.
15. Failure to furnish correct information to SEBI as stipulated under the SEBI Act or rules or regulations made thereunder is in violation of section 15(A)(a) of SEBI Act, for which monetary penalty can be imposed as stipulated in the said section. This has been recognised by the Hon'ble Securities Appellate Tribunal in various cases, including that of Kemefs Specialities Pvt. Ltd. v. SEBI (Appeal No. 54/2011). Further, as per regulation 27(xv) of the Broker Regulations a stock broker or a sub-broker who commits violation of any of the provisions for which monetary penalty or other penalties could be imposed, is liable for any action as specified in Chapter V of Intermediaries Regulations, including suspension or cancellation of his certificate of registration as a stock broker or a sub-broker.
16. I find that the submissions made by MBPL with respect to the false undertakings submitted to SEBI vide letters dated June 16, 2009 are not legally tenable. Ignorance of the law is no excuse for having violated express provisions of the law. The law seeking to protect public interest cannot be deemed to have been waived by any authority if it does not immediately discover the violation. None of the submissions made by MBPL are acceptable in the eye of the law.
17. Issue pertaining to the alleged violation of regulation 8 (1) (f) of the SCR Rules: With respect to the second charge vis-à-vis MBPL regarding violation of regulation 8 (1) (f) of the SCR Rules, upon perusal of the Enquiry Report and material available on record, I find that MBPL was also involved in trading in bullions and metal on MCX. Despite the requirement contained in the

proviso to rule 8 (1) (f) of the SCR Rules that a member can conduct business in commodity derivatives only by setting up a separate company which shall comply with the regulatory requirements as may be specified by the Forward Markets Commission from time to time, MBPL chose to carry on the business of trading in commodity derivatives as well as currency derivatives through the same company, in violation of the abovesaid provision of the SCR Rules. These charges have been admitted by MBPL in its reply dated December 21, 2012 as well as during the hearing before me on March 20, 2013. Therefore, I find that MBPL has violated rule 8(1)(f) of the SCR Rules.

18. The conduct of the directors of the MBPL indicates that they have flagrantly flouted SEBI's orders expressly debarring them from accessing the securities market. Thereafter, MBPL has furnished false undertakings by the said directors to the regulator and obtained registration on the basis of such misleading information. Furnishing of false information to obtain registration as an intermediary is a very serious issue and is required to be dealt with accordingly. SEBI as a market regulator does not expect the intermediaries to flout directions issued in the interest of securities market. Such an intermediary cannot be allowed to function in the market and must invite strict action. I am of the view that such conduct, if not handled firmly with strict penalty, would give wrong signals to the market and set a bad precedent of encouraging indiscipline.

ORDER

19. I, therefore, in exercise of the powers conferred upon me in terms of section 19 of Securities and Exchange Board of India Act 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 hereby cancel the certificate of Registration of Mudra Bullions Private Limited bearing SEBI Registration no. INE261344936.

20. This order shall come into force on expiry of twenty one days from the date of this order.

DATE: APRIL 10, 2013

PLACE: MUMBAI

S. RAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA