

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

ORDER

Under Sections 11(1), 11(4)(b), 11B and 11D of the Securities and Exchange Board of India Act, 1992 read with SEBI (Portfolio Managers) Regulations, 1993 and SEBI (Investment Advisers) Regulations, 2013 in respect of Asian Corporate Consultancy and its proprietor viz., Shri Dilip Anantrai Desai (PAN: AABPD3489M).

1. Securities and Exchange Board of India ("**SEBI**") received a complaint dated July 28, 2014 against Asian Corporate Consultancy ("**Asian Corporate**") and its proprietor, Shri Dilip Anantrai Desai ("**Mr. Desai**"), alleging that the complainant's trading account was being handled by Asian Corporate for three months on a profit sharing basis. Asian Corporate incurred losses on the account and failed to return the money to the complainant as per the agreement. The complainant had also submitted copy of Memorandum of Understanding ("**MOU**") signed with Asian Corporate and a copy of payment receipt issued by Asian Corporate.
- 2.1 As a matter of preliminary examination in the matter, SEBI, vide letter dated August 25, 2014, advised Asian Corporate to furnish the following information alongwith the supporting documents, viz. –
 - a. *Registered/corporate addresses of Asian Corporate along with the phone numbers;*
 - b. *Name, address and phone numbers of all of its promoters/directors;*
 - c. *The list of all the securities/investment activities undertaken by Asian Corporate;*
 - d. *Since when Asian Corporate is in the business of portfolio management services;*
 - e. *The following details in a year-wise tabular format, viz:-*
 - i. *Number of clients to whom Asian Corporate provided MOU based service;*
 - ii. *Total amount of money collected from the clients;*
 - iii. *Total Assets Under Management ("**AUM**") as on July 31, 2014;*
 - iv. *Total amount of money deployed as on July 31, 2014;*

- f. Break-up of AUMs under various asset classes;*
- g. List of clients and minimum amount accepted for managing the portfolio;*
- h. The details of fee charged for various products/ services offered by Asian Corporate;*
- i. Whether Asian Corporate provides any kind of guaranteed return scheme? If yes, the details of the same;*
- j. Whether Asian Corporate is providing any kind of investment advice services. If yes, the complete details of the same;*
- k. Is Asian Corporate registered with any regulators in India? If yes, the details;*
- l. A copy of the audited annual accounts for previous three financial years;*

2.2 In response thereto, Mr. Desai vide letter dated September 01, 2014 submitted as under:

- a. Mr. Desai, proprietor of Asian Corporate, is in the business of providing technical and fundamental research to his clients since 1998;
- b. Mr. Desai was handling the funds of his colleagues who insisted him to monitor their small funds. However, this kind of service is not part of his business activity and was intended as a personal service to some of his friends, colleagues and relatives. Mr. Desai is maintaining six such accounts;
- c. Asian Corporate charges `3,000/- minimum for stock market and MCX advisory to his clients. However, he does not charge anything for handling the clients' trading accounts;
- d. Mr. Desai does not provide any guaranteed returns on any of the schemes;
- e. Mr. Desai and Asian Corporate are not registered with SEBI or any other regulators;

2.3 In addition to the above submissions, Mr. Desai also furnished the audited annual accounts for Asian Corporate and himself for the financial years 2010-11, 2011-12 and 2012-13. It was observed from the audited annual accounts of Asian Corporate and Mr. Desai, that they had collected funds under the head of 'Share Trading Deposits' and given unsecured loans and advances to multiple entities. SEBI, vide email dated September 10, 2014, advised Mr. Desai to provide details of all the unsecured loans and

advances given by Mr. Desai and Asian Corporate and all the 'Share Trading Deposits' as mentioned in the 'Current liabilities' annexed to the financial statements submitted by him.

2.4 In the meanwhile, the complainant, vide letter dated September 11, 2014 and email dated September 12, 2014 informed SEBI that he had received the full and final payment from Mr. Desai and Asian Corporate. Hence, the complainant withdrew the complaint. The receipt of final payment was also enclosed.

2.5 In response to SEBI's e-mail dated September 10, 2014, Mr. Desai vide letter dated September 17, 2014 furnished the consolidated list of all unsecured loans and advances given by Mr. Desai and Asian Corporate for all the three years and the list of all the share trading deposits collected by them. In addition, Mr. Desai also stated that he offered the clients the following options for availing the Stock market and MCX consultancy services, viz:-

- a. Fixed fees to be paid on monthly/ quarterly basis;
- b. Interest free deposits were also accepted from clients as per the service availed and the deposits were refunded when request for discontinuation of the services was received.

Mr. Desai also stated that he was in the Real Estate Broking business.

2.6 SEBI, vide email November 05, 2014, advised Mr. Desai to provide the following details of Share Trading Deposits for the last three financial years in a tabular format, viz.-

- a. Financial Year;
- b. Name of person;
- c. Amount collected;
- d. Service provided.

The said information was furnished by Mr. Desai in the specified format vide letter dated November 12, 2014.

- 2.7 SEBI, vide email dated November 14, 2014, sought the following additional information, viz.-
- a. Copy of all the MOUs signed by Mr. Desai and Asian Corporate with their clients alongwith the copy of the payment receipts issued to the clients;
 - b. All the bank account statements for the financial years 2013 and 2014 of Asian Corporate and Mr. Desai;
 - c. Audited annual accounts for the previous financial year and the current financial year;
 - d. Details of the share trading deposits, if any, collected during the previous financial year and the current financial year in the format specified in the email dated November 5, 2014.
- 2.8 Vide letter dated November 21, 2014, Mr. Desai sought extension of time upto December 10, 2014 to submit the aforementioned information. Thereafter, on December 10, 2014, Mr. Desai vide an undated letter submitted the documents such as MOUs signed with the clients, the receipt of payment by the client, bank account statement for the year 2013-14 and 2014-15 for himself and Asian Corporate and the unaudited annual report for financial year 2013-14, the receipt of repayment of money to the clients. Further, Mr. Desai stated that no Share Trading Deposits were collected in 2013-14 and 2014-15.
3. On an examination of the material available on record, i.e. correspondences exchanged between SEBI and Asian Corporate and its proprietor Mr. Desai along with the documents contained therein and other information/materials furnished by the Complainant, etc. it is observed that:
- i. Asian Corporate is a sole proprietorship concern of Mr. Desai, having registered office at Building No. 5, Room No.3, SwapnaPurthy Jivlapada CHSL, Thakkur Village, Kandivali (East), Mumbai - 400101. (Earlier at 32, Gokul Nagari Building No. 2, Opp. Gokul Concorde, Thakkur Village, Kandivali (East), Mumbai -400101);

- ii. Mr. Desai is in the business of providing technical and fundamental research to clients since 1998 and charges professional fees for the services rendered.;
- iii. Mr. Desai and Asian Corporate had accepted 'Share Trading Deposits' for the advisory, education and service based activities of Asian Corporate and also given unsecured loans to multiple entities . The details of these share trading deposits and unsecured loans are summarized as under:

Deposits taken in the name of	Year	Share Trading Deposits (in Rs.)	No. of clients from whom Share Trading Deposit collected	Loans and advances (in Rs.)
Mr. Dilip Desai	2010-11	5,50,000	9	3,29,670
	2011-12	7,56,500	8	7,29,495
	2012-13	6,49,500	16	13,18,495
Asian Corporate	2010-11	40,71,000	42	33,68,846
	2011-12	44,28,000	53	31,91,662
	2012-13	49,33,800	36	47,06,912
TOTAL		1,53,88,800	164	1,36,45,080

- iv. On examination of the MoUs entered with the clients, it is observed that Mr. Desai is handling the trading accounts of his clients on profit sharing basis. The MOU, signed by Mr. Desai, states, "*This Memorandum of Understanding is between D D Desai & as we have been entrusted by you to handle your trading account in Asian. We will trade with care and faith. Profit sharing will be 80/20 ratio & brokerage will be .03% for F&O & delivery base 0.20%.....*".

The details of funds collected by Mr. Desai for managing their port-folios are summarized as under:

S. No	Year	Amount collected (in Rs.)	No. of investors
1.	2013	2,50,000	2

2.	2014	4,25,000	4
TOTAL		6,75,000	6

- 4.1 It is *prima facie* observed from the admissions of Mr. Desai, proprietor of Asian Corporate, Mr. Desai that he offers two types of options for availing the Stock and MCX consultancy services, viz., (i) Fixed fees to be paid on monthly/ quarterly basis; and (ii) Interest free deposits were also accepted from clients as per the service availed and the deposits were refunded on request for discontinuation of the services was received. It is noted from Mr. Desai's reply dated November 12, 2014 that he is accepting 'Share Trading Deposits from the investors and offering stock market updates, MCX updates, Currency updates, etc to its clients upon payment of fees.
- 4.2 In light of the above analysis and examination, it is evident that the activities of Asian Corporate as discussed in the preceding paragraphs clearly indicate that they are engaged in providing investment advisory services to the investors on payment of fees, which *prima facie* fall under the definition of "*investment adviser*" as defined by Regulation 2(m) of the SEBI Investment Advisers Regulations, 2013 ("**IA Regulations**") which reads as under:
- "investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;"*
- 4.3 It is also noted from the perusal of MOUs and the statements of Mr. Desai that they undertook to manage the funds of investors on profit sharing basis pursuant to signing of an MOU. Under these facts and circumstances, it is observed that the services offered by Mr. Desai amounts to offering services of a "portfolio manager", as defined under Regulation 2(cb) of the SEBI (Portfolio Managers) Regulations, 1993 ("**PMS Regulations**").
- 4.4 Regulation 2(cb) of PMS Regulations defines a Portfolio Manager as:

"portfolio manager" means any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the client, as the case may be'.

4.5 In order to examine the genuineness of the activities and to ensure that no investors are defrauded, it is imperative that any person carrying out investment advisory activities or portfolio management activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of PMS Regulations. Section 12(1) of the SEBI Act, 1992 reads, " No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, **portfolio manager, investment adviser** and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act."

4.6 As per Regulation 3(1) of the IA Regulations, "On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub regulation (2) within the said period of six months, till the disposal of such application."

Similarly, Regulation 3 of PMS Regulations also provides "No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations".

4.7 In this context, it is noted that Asian Corporate and its proprietor, Mr. Desai, are not registered with SEBI in any capacity such as broker, sub-broker, investment advisor or portfolio manager. The characteristics and features of the business activity carried out by Mr. Desai as discussed in the preceding paragraphs *prima facie* leads to the conclusion that Mr. Desai is providing services of investment adviser as well as portfolio manager. Thus, the activities of Mr. Desai are *prima facie* in violation of 12(1) of SEBI Act, 1992 read with Regulation 3 of the IA Regulations and Regulation 3 of PMS Regulations.

- 4.8 It is noted that these activities are in violation of various provisions of IA and PMS Regulations and can put investors at great risk. Further, in case of default by Mr. Desai in meeting of obligations towards his clients/investors, the normal remedies available to investors while dealing with a SEBI registered intermediary such as invoking the grievance redressal mechanisms, referring the matters to appropriate forums such as arbitration etc. are not available in this case.
5. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Therefore, steps have to be taken in the instant matter to prevent such persons from further misleading investors and prevent them from soliciting and collecting funds from investors and carrying on portfolio management services without due registration from SEBI. Therefore, in order to ensure that Mr. Desai and Asian Corporate do not collect any funds from the public and indulge in unauthorized investment advisory and portfolio management activities until full facts and materials are brought up and a final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action. In light of the same, I find there is no other alternative but to take recourse through an ad interim ex-parte order against Mr. Desai, proprietor of Asian Corporate, for preventing him from collecting funds and indulging in unauthorized investment advisory and portfolio management services without obtaining registration from SEBI in accordance with the law.
6. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4)(b), 11B and 11D read with Section 19 of the SEBI Act, 1992, by way of this *ad-interim ex-parte* order:
- *direct Asian Corporate Consultancy and Mr. Dilip Anantrai Desai (PAN: AABPD3489M), proprietor of Asian Corporate:-*

- a. to cease and desist from acting as an investment advisor and portfolio manager and not to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever;*
- b. not to divert any funds raised from the investors.*

7. The above directions shall take effect immediately and shall be in force until further orders.
8. This Order shall be treated as a show cause notice and Mr. Desai, proprietor of Asian Corporate Consultancy may show cause as to why appropriate directions, under the SEBI Act, 1992 and relevant SEBI Rules/Regulations including direction, prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, should not be issued against them.
9. In this context, Mr. Desai proprietor of Asian Corporate Consultancy may, within 21 days from the date of receipt of this Order, file his reply, if any, to this Order and may also indicate whether he desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Place: Mumbai
Date: April 24 , 2015

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA