

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

ORDER

**UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992 READ WITH
REGULATION 35 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA
(MERCHANT BANKERS) REGULATIONS, 1992.**

IN THE MATTER OF –

- 1. ALTIUS FINSERV PRIVATE LIMITED [REGISTRATION NO. INM000011732;
PAN: AAACU3953D].**
 - 2. ITS DIRECTOR AND KEY MANAGEMENT PERSON, SHRI PAWAN BANSAL
[PAN: ACFPB2226A].**
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Background –

- 1.1 Securities and Exchange Board of India (“**SEBI**”) granted a Certificate of Registration as a Merchant Banker to Altius Finserv Private Limited (“**Altius Finserv**”), in accordance with the SEBI (Merchant Bankers) Regulations, 1992 (“**Merchant Bankers Regulations**”), for the period from June 10, 2010 to June 9, 2015.
- 1.2 Shri Pawan Bansal was appointed as the Managing Director of Altius Finserv with effect from November 2, 2009. Shri Pawan Bansal was also the Key Management Person of Altius Finserv with effect from March 12, 2010 i.e. prior to grant of Certificate of Registration as a Merchant Banker, by SEBI, to that entity.
- 1.3 Subsequently, Shri Pawan Bansal continued in the aforementioned capacity during the validity period of the Certificate of Registration of Altius Finserv.
- 2.1 In August 2014, SEBI took on record several newspaper clippings reporting the Syndicate Bank bribery case involving M/s Bhushan Steel Limited (“**Bhushan Steel**”), which resulted in the arrest of Shri Pawan Bansal alongwith Shri S. K. Jain (Chairman and Managing Director, Syndicate Bank) and 9 other individuals, by the Central Bureau of Investigation (“**CBI**”). Shri Pawan Bansal was arrested on alleged charges of taking a bribe of ₹50 Lakhs to enhance the credit

limit of 2 companies i.e. Bhushan Steel and M/s Prakash Industries Limited (“**Prakash Industries**”), in violation *inter alia* of Banking Rules.

- 2.2 Vide an e-mail dated August 12, 2014, SEBI sought clarification on the aforementioned news reports from Altius Finserv.
- 2.3 A reply dated August 13, 2014, was received from Altius Finserv *inter alia* informing SEBI that –
- i. CBI registered two separate cases involving Shri S. K. Jain.
 - ii. The first case was regarding Bhushan Steel where CBI claimed to have recovered alleged bribe amount.
 - iii. The second case, where Shri Pawan Bansal was named as an intermediary, was related to the sanction of External Commercial Borrowings (“**ECB**”) by Syndicate Bank, for Prakash Industries. The CBI has alleged that Syndicate Bank sanctioned the ECB with certain procedural irregularities.
 - iv. Shri Pawan Bansal was sent to judicial custody.
- 2.4 Thereafter, with effect from September 10, 2014, Shri Pawan Bansal was appointed as the Compliance Officer and Principal Officer of Altius Finserv.
- 2.5 Vide a letter dated October 14, 2014 (received at SEBI on November 26, 2014), Altius Finserv submitted an application to SEBI, for surrender of its Certificate of Registration as Merchant Banker.

Show Cause Notice date June 4, 2015 –

- 3.1 Subsequent to an examination of the abovementioned reply submitted by Altius Finserv, SEBI issued a Show Cause Notice (“**SCN**”) dated June 4, 2015, under Sections 11 and 11B of the SEBI Act, 1992 (“**SEBI Act**”) read with Regulation 35 of the Merchant Bankers Regulations, to the registered Intermediary, Altius Finserv, and its Managing Director and Key Management Person, Shri Pawan Bansal.
- 3.2 As per the abovementioned SCN,
- i. In the Syndicate Bank bribery case involving Bhushan Steel, Shri Pawan Bansal was alleged to have facilitated defaulters from adverse action by that Bank. Further, on account of bribery charges in the case of Prakash Industries involving sanction of ECB, Shri Pawan Bansal was alleged to have been sent to judicial custody.

- ii. Altius Finserv and Shri Pawan Bansal were alleged to have consequently failed to satisfy the criteria for '*fit and proper person*' specified under Regulations 6(gg) and 6A of the Merchant Bankers Regulations read with Schedule II of the SEBI (Intermediaries Regulations), 2008 ("**Intermediaries Regulations**").
- iii. Further, in view of non-satisfaction of the aforementioned provisions of the Merchant Bankers Regulations read with the Intermediaries Regulations, in respect of the '*fit and proper person*' criteria, Altius Finserv was also alleged to have violated the provisions of Clause 28 of the Code of Conduct for Merchant Bankers specified under Regulation 13 read with Schedule III of the Merchant Bankers Regulations.
- iv. Shri Pawan Bansal, who was *inter alia* the Managing Director, was in charge of and responsible for the conduct of business of the registered Intermediary, Altius Finserv.

3.3 The relevant provisions of the Merchant Bankers Regulations and the Intermediaries Regulations, are reproduced as under:

“Regulation 6 of the Merchant Bankers Regulations – Consideration of Application

The Board shall take into account for considering the grant of a certificate, all matters which are relevant to the activities relating to merchant banker and in particular the applicant complies with the following requirements, namely: –

... (gg) the applicant is a fit and proper person.

Regulation 6A of the Merchant Bankers Regulations – Criteria for fit and proper person.

For the purpose of determining whether an applicant or the merchant banker 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.

Schedule II of the Intermediaries Regulations – 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 network.”*

Regulation 13 of the Merchant Bankers Regulations – Code of conduct.

Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.

Clause 28 of Schedule III of the Merchant Bankers Regulations – Code of Conduct for Merchant Bankers.

28. A merchant banker shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).”

Proceedings pursuant to the Show Cause Notice date June 4, 2015 –

- 4.1 In furtherance to paragraph 13 of the SCN date June 4, 2015, Altius Finserv and Shri Pawan Bansal submitted their replies to SEBI vide letter dated June 29, 2015 and also made a request for an opportunity of personal hearing.
- 4.2 Pursuant to the abovementioned request and in conformity with the principle of natural justice, an opportunity of personal hearing was granted to Altius Finserv and Shri Pawan Bansal, on October 14, 2015.
- 4.3 During the hearing held on October 14, 2015, Altius Finserv and Shri Pawan Bansal appeared before me through their Advocates.
- 4.4 Subsequently, Altius Finserv and Shri Pawan Bansal made further written submissions vide their letter dated October 28, 2015.
- 4.5 The following are the submissions made in the reply dated June 29, 2015 and during the hearing held on October 14, 2015 alongwith the subsequent letter dated October 28, 2015, –
 - i. Altius Finserv did not carry out any activity related to securities market, viz. Initial Public Offer, Rights Issue, Takeover, etc. during the validity period of its Certificate of Registration.
 - ii. Altius Finserv surrendered its Certificate of Registration as Merchant Banker to SEBI, vide letter dated October 14, 2014. In view of the aforesaid surrender of Certificate of Registration, the impugned SCN is void *ab initio*.
 - iii. First Information Report (“**FIR**”) (FIR no. RC-AC1-2014-A0005) was registered by the CBI on August 1, 2014, in only one of the cases against Shri Pawan Bansal i.e. in the matter of Prakash Industries. No FIR has been registered against Shri Pawan Bansal in the matter of Bhushan Steel.

- iv. There are no allegations against Altius Finserv of any wrongdoing and no FIR has been registered against Altius Finserv.
- v. On the date of registration of the abovementioned FIR, Altius Finserv had three Directors on its Board and three persons were specified as Key Management Persons. There were all professionally qualified in the field of finance and had vast and diverse experience. This establishes that Altius Finserv was competent enough to carry out its Merchant Banking operations even without Shri Pawan Bansal.
- vi. As per the criteria specified in Schedule II of the Intermediaries Regulations, registration of FIR does not render any person ineligible for being a *'fit and proper person'*. Further, the impugned SCN does not specifically set out the provision under which Shri Pawan Bansal has been found not *'fit and proper person'*.
- vii. As per the relevant provisions of the Indian Penal Code, the CBI has to file the charge sheet within 60 days of registration of FIR. However, the CBI has not filed the charge sheet till date i.e. nearly one year after registration of FIR. This establishes that CBI has not been able to gather enough incriminating material against Shri Pawan Bansal, which can be considered as evidence in the Court of Law and hence, they are unable to file the charge sheet.
- viii. Till date, since no charge sheet has been filed in a Court of law, Altius Finserv and Shri Pawan Bansal, both, are *'fit and proper person'*. Therefore, it is denied that Altius Finserv and Shri Pawan Bansal ever violated Regulation 6(gg) and Regulation 6A of the Merchant Bankers Regulations read with Schedule II of the Intermediaries Regulations and Clause 28 as specified under Schedule III of the Merchant Bankers Regulations.
- ix. The impugned SCN is bad in law since it has been issued in gross violation of the procedure prescribed under the Merchant Bankers Regulations. Regulation 35 of the Merchant Bankers Regulations, which makes a cross reference to Chapter V of the Intermediaries Regulations, does not contain any provisions regarding how action is to be taken in case of default. Therefore, the procedure prescribed under Chapter V of the Intermediaries Regulations is mandatory and sacrosanct and the same cannot be abdicated or detracted from. In the instant proceedings, though directions are proposed to be issued under Regulation 35 of the Merchant Bankers Regulations, the mandatory procedure prescribed under Chapter V of the Intermediaries Regulations prior to the issue of directions under the said Regulation, has not been followed. Therefore, in the instant proceedings, under Regulation 35 of Merchant Bankers Regulations and Section 11 and 11B of SEBI Act, no directions can be issued which are in contravention of Regulation 35 of the Merchant Bankers Regulations and Section 12(3) of the SEBI Act since the prescribed mandatory procedure under Chapter V of the Intermediaries Regulations has been totally discarded.

4.6 Subsequent to the aforementioned hearing, SEBI vide e-mail dated January 25, 2016, sought the following information from Altius Finserv, viz. –

- i. Relationship between Shri Pawan Bansal and Altius Finserv prior to the date of his appointment as Compliance Officer and Principal Officer of that entity in September 2014 including whether or not he was an employee of that entity, the nature of his employment, etc.
- ii. Shareholding of Shri Pawan Bansal in Altius Finserv as on July 31, 2014; August 31, 2014, September 30, 2014 and October 31, 2014.

4.7 Altius Finserv submitted the abovementioned information vide an e-mail dated January 28, 2016.

Consideration of Issue –

5.1 I have considered the SCN dated June 4, 2015, replies/submissions made by Altius Finserv and Shri Pawan Bansal vide letter dated June 29, 2015; during the hearing held on October 14, 2015 and vide letter dated October 28, 2015 alongwith information submitted by Altius Finserv vide e-mail dated January 28, 2016, and all other relevant material available on record. In light of the same, I shall now proceed to deal with the merits of the case.

5.2 The issues for determination in the instant proceedings are –

- i. *Whether Altius Finserv and Shri Pawan Bansal are 'fit and proper person' in accordance with the provisions of Regulations 6(gg) and 6A of the Merchant Bankers Regulations read with Schedule II of the Intermediaries Regulations?*
- ii. *Whether Altius Finserv was in violation of the provisions of Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant Bankers Regulations?*
- iii. *Whether appropriate directions against Altius Finserv and Shri Pawan Bansal, can be issued under Section 11 and 11B of the SEBI Act and Regulation 35 of the Merchant Bankers Regulations for non-compliance of Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant Bankers Regulations?*

Findings –

6.1 Preliminary submissions made by Altius Finserv and Shri Pawan Bansal.

- 6.1.1 In their submissions, Altius Finserv and Shri Pawan Bansal have contended that since the intermediary vide letter dated October 14, 2014, has surrendered its Certificate of Registration as Merchant Banker to SEBI, the SCN dated June 4, 2015, issued in the instant proceedings is void *ab initio*.
- 6.1.2 I note that the abovementioned letter dated October 14, 2014, which was received at SEBI on November 26, 2014, was an application made by Altius for surrender of its Certificate of Registration as Merchant Banker. Under Regulation 31(2) of the Intermediaries Regulations, while disposing of a request made by an intermediary, for surrender of its Certificate of Registration granted under the SEBI Act or Regulations made thereunder, SEBI may take into consideration factors, including but not limited to, defaults or *pending action*, if any, against that intermediary. In the instant proceedings, it is noted that on the date of receipt of the aforementioned letter/application made by Altius Finserv, there was an inquiry/examination pending against Altius Finserv and its Managing Director and Key Management Person, on account of the registration of a criminal case against and resultant arrest by the CBI of Shri Pawan Bansal. In view of the stated fact, the aforementioned application made by Altius Finserv, has been kept in abeyance by SEBI. It is noted that the aforesaid inquiry/examination subsequently resulted in the issuance of the SCN dated June 4, 2015, against the registered intermediary i.e. Altius Finserv and Shri Pawan Bansal. I, therefore, find no merit in the contention raised by Altius Finserv and Shri Pawan Bansal that the SCN dated June 4, 2015, issued in the instant proceedings is void *ab initio* on account of its application for surrender of Certificate of Registration.

7.1 ***Whether Altius Finserv and Shri Pawan Bansal are ‘fit and proper person’ in accordance with the provisions of Regulations 6(gg) and 6A of the Merchant Bankers Regulations read with Schedule II of the Intermediaries Regulations?***

- 7.1.1 In their submissions, Altius Finserv and Shri Pawan Bansal have *inter alia* submitted that as per the criteria specified in Schedule II of the Intermediaries Regulations, registration of FIR does not render any person ineligible for being a ‘fit and proper person’. Further, Altius Finserv and Shri Pawan Bansal have submitted that there are no allegations against Altius Finserv of any wrongdoing and no FIR has been registered against the registered intermediary till date and further, since no charge sheet has been filed in a Court of law by the CBI, Altius Finserv and Shri Pawan Bansal both are ‘fit and proper person’.

7.1.2 In this context, the following is noted from the material available on record –

- i. During the validity period of the Certificate of Registration granted to Altius Finserv i.e. June 10, 2010–June 9, 2015, Shri Pawan Bansal was its Managing Director and was also its Key Management Person.
- ii. In the *Report of Merchant Bankers for the Half Year ended September 2014 (dated April 6, 2015)*, submitted by Altius Finserv to SEBI, it was stated that the CBI registered an FIR (FIR no. RC-AC1-2014-A0005) against Shri Pawan Bansal on August 1, 2014. Further, it was stated that Shri Pawan Bansal was arrested by the CBI on August 2, 2014 and was released on bail by the Competent Court on October 1, 2014.
- iii. Shri Pawan Bansal was also appointed as the Compliance Officer and Principal Officer of Altius Finserv, with effect from September 10, 2014 i.e. after the registration of FIR and subsequent arrest by the CBI. From the *Report of Merchant Bankers for the Half Year ended September 2014 (dated April 6, 2015)*, it is observed that the aforementioned appointment was in the backdrop of cessation of Shri Rajendra Agrawal and Shri Gagan Baya as Key Management Persons of Altius Finserv.
- iv. Vide its e–mail dated January 28, 2016, Altius Finserv informed SEBI that Shri Pawan Bansal was its employee and was serving in the capacity of Managing Director prior to September 2014 and thereafter. Further, Altius Finserv informed SEBI of Shri Pawan Bansal's shareholding in that registered intermediary prior to the registration of FIR and subsequent arrest by the CBI and thereafter, which is reproduced below –

DATE	NUMBER OF SHARES HELD	% OF TOTAL SHARE CAPITAL
31.07.2014	1,30,56,600	99.12%
31.08.2014	1,30,56,600	99.12%
30.09.2014	1,30,56,600	99.12%
31.10.2014	1,30,56,600	99.12%

- v. The Information Sheet annexed with the FIR (FIR no. RC-AC1-2014-A0005) registered against Shri Pawan Bansal, by the CBI on August 1, 2014, contains the following observations –

- i. *“Source has informed that Shri Pawan Bansal of M/s Altius Finserv Pvt. Ltd. along with his associates ... have been acting as middleman between senior level functionaries of PSE banks and the*

- private firms who have submitted their loan proposals through his firm on the pretext of providing various financial services like credit solutions, debt capital market investment banking, etc.*
- ii. ... It has been informed by the source that Shri Pawan Bansal pursues the case of his client by exercising his personal influence over the bank officials and uses corrupt and illegal means to influence them.*
 - iii. It has also been revealed that in lieu of hiring their services the company provides a composite fee to M/s Altius Finserv Pvt. Ltd. This fee comprises of the consultancy charges of M/s Altius Finserv Pvt. Ltd. and the illegal gratification which is to be paid to the concerned bank officials directly or through their middlemen/agents, for obtaining undue favours from them.*
 - iv. ... The source has revealed that M/s Prakash Industries hired the services of M/s Altius Finserv Pvt. Ltd. and submitted the proposal to Syndicate Bank for sanction of External Commercial Borrowing of 20 million US Dollars for buyback of Foreign Currency Convertible Bonds (FCCB). Chairman, M/s Prakash Industries and ... Director of M/s Prakash Industries have been in regular contact with Shri Pawan Bansal in connection with the approval of their proposal at Syndicate Bank.*
 - v. ... The source has also revealed that in furtherance of the above said conspiracy, Shri Pawan Bansal contacted Shri Sudhir Kumar Jain, CMD, Syndicate Bank on 14.07.2014 and requested for expediting the approval to the proposal of M/s Prakash Industries mentioning the acceptance of proposal by him at this stage would benefit the company.*
 - vi. ... Thereafter the said proposal of M/s Prakash Industries was approved on 15.07.2014 and the same was conveyed by Shri Sudhir Kumar Jain to Shri Pawan Bansal.*
 - vii. ... The source has also revealed that in order to get the expeditious results, M/s Prakash Industries had earlier agreed to pay huge sums of money to Shri Pawan Bansal for availing his services. It was also agreed upon that Shri Pawan Bansal will take care of the payments of illegal money to Shri Sudhir Kumar Jain. ...*
 - viii. The abovementioned facts reveal that ... Shri Pawan Bansal, Director of M/s Altius Finserv Pvt. Ltd ... have committed criminal offences U/s 120-B IPC r/w Section 9 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 ("**Prevention of Corruption Act**").*

7.1.3 From the preceding paragraphs, it is observed that Shri Pawan Bansal is the Managing Director of Altius Finserv and also the Key Management Person in that intermediary during the validity period of its Certificate of Registration i.e. June 10, 2010–June 9, 2015. Shri Pawan Bansal was appointed as Compliance Officer and Principal Officer with effect from September 10, 2014, in the aforesaid registered intermediary, Altius Finserv. Further, it is observed that Shri Pawan Bansal is a substantial shareholder (almost 100%) in Altius Finserv including during the period between July 2014–October 2014 [Paragraph 7.1.2(iv) at page 8].

7.1.4 As per Regulation 6(gg) of the Merchant Bankers Regulations, for considering the grant of a Certificate of Registration, SEBI *shall take into account all matters which it deems relevant to the activities relating to Merchant Bankers* including considering whether or not the applicant is a *'fit and proper person'*. Further, as per Regulation 6A of the Merchant Bankers Regulations, SEBI may take into account the criteria specified in Schedule II of the Intermediaries Regulations for determining whether an applicant is a *'fit and proper person'*. From a combined reading of the aforementioned provisions concerning *'fit and proper person'*, it is amply clear that while considering any application for grant of registration/renewal as any intermediary, the applicant and also the persons who hold responsible positions in the applicant and are responsible for its activities and/or are in a position to influence the decision making process by virtue of their substantial shareholding in the applicant or otherwise, have to pass the test of being a *'fit and proper person'*.

7.1.5 In his capacity as Managing Director and Key Management Person of Altius Finserv, Shri Pawan Bansal is responsible for the activities of that registered intermediary. Further, by virtue of his substantial shareholding, Shri Pawan Bansal exercises significant control and influence over Altius Finserv. The observations contained in the FIR registered by the CBI note that: *"in lieu of hiring their services the company provides a composite fee to M/s Altius Finserv Pvt. Ltd. This fee comprises of the consultancy charges of M/s Altius Finserv Pvt. Ltd. and the illegal gratification which is to be paid to the concerned bank officials directly or through their middlemen/agents, for obtaining undue favours from them."* From the aforementioned, it is clearly evident that Shri Pawan Bansal is alleged to have carried out undesirable and illegal activities through the registered intermediary, Altius Finserv. In the instant proceedings, it is, therefore, relevant to acknowledge that the charge of criminal conspiracy to commit offence under the Prevention of Corruption Act (as alleged in aforementioned FIR and which resulted *inter alia* in the arrest of Shri Pawan Bansal), is certainly of a grave nature and if established, has serious consequences for the securities market and the investors therein too. Such charge against Shri Pawan Bansal, if established, creates an anomaly in the solemnity that is expected in financial transactions carried out by a registered intermediary and will also involve moral turpitude. At this juncture, I crave leave to refer to the Orders of Hon'ble Securities Appellate Tribunal ("SAT") in the following matters, viz.

i. ***Jermyn Capital LLC vs. SEBI (Appeal No. 21/2006)***, wherein it observed:

"Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good. This impression or opinion is generally formed on the basis of the association he has with others and/or on the basis of his past conduct. A person is known by the company he keeps. In the very nature of things, there cannot

*be any direct evidence in regard to the reputation of a person whether he be an individual or a body corporate.
...”*

ii. ***Mukesh Babu Securities Limited vs. SEBI (Appeal No. 53 of 2007)***, wherein it observed:

“It is true that these are only allegations made in the charge-sheet and we are conscious that these are yet to be established in a court of law but from what is stated in the charge-sheet liaison between Shri. Mukesh Babu and the chairman of the Bank prima facie appears to be established. The CBI has alleged that there was criminal conspiracy among all the accused and that they have committed illegal acts which have resulted in wrongful loss to the depositors of the Bank and corresponding gain to the accused. The charges levelled are indeed serious and if established, they involve moral turpitude. We are unable to agree with the learned counsel for the appellant that the criminal case pending against Shri. Mukesh Babu and others has no concern with the securities market. It is through the terminals of the company that the chairman of the Bank had traded and incurred losses through speculative trading which losses have been made up by overdrawing money from the Bank. In these circumstances, the Board was entitled to take the view that the company was not a fit and proper person. It could not be said that Shri. Mukesh Babu or the company enjoyed good reputation within the meaning of the Fit and Proper Person Regulations.”

7.1.6 In light of the aforesaid observations of the Hon’ble SAT, I am of the considered opinion that in the facts and circumstance of the instant proceedings, Altius Finserv and Shri Pawan Bansal have failed to satisfy the criteria of *'fit and proper person'*.

8.1 ***Whether Altius Finserv was in violation of the provisions of Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant Bankers Regulations?***

8.1.1 As stated in paragraphs 7.1.1–7.1.6, Shri Pawan Bansal was appointed and continues to function as the Managing Director and Key Management Person of Altius Finserv. Shri Pawan Bansal is also a substantial shareholder (almost 100%) exercising significant control and influence over the registered intermediary, Altius Finserv. Therefore, the criteria of *'fit and proper person'* cannot be said to have been satisfied by Altius Finserv and Shri Pawan Bansal. In view of the aforesaid, Altius Finserv has failed to comply with the provisions of Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant Bankers Regulations.

9.1 *Whether appropriate directions against Altius Finserv and Shri Pawan Bansal, can be issued under Section 11 and 11B of the SEBI Act and Regulation 35 of the Merchant Bankers Regulations for non-compliance of Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant Bankers Regulations?*

9.1.1 Altius Finserv and Shri Pawan Bansal have also contended that the impugned SCN is bad in law since it has been issued in gross violation of the procedure prescribed under the Merchant Bankers Regulations. Regulation 35 of the Merchant Bankers Regulations, which makes a cross reference to Chapter V of the Intermediaries Regulations, does not contain any provisions regarding how action is to be taken in case of default. Therefore, the procedure prescribed under Chapter V of the Intermediaries Regulations is mandatory and sacrosanct and the same cannot be abdicated or detracted from. In the instant proceedings, though directions are proposed to be issued under Regulation 35 of the Merchant Bankers Regulations, the mandatory procedure prescribed under Chapter V of the Intermediaries Regulations prior to the issue of directions under the said Regulations, has not been followed. Therefore, in the instant proceedings, under Regulation 35 of Merchant Bankers Regulations and Section 11 and 11B of SEBI Act, no directions can be issued which are in contravention of Regulation 35 of the Merchant Bankers Regulations and Section 12(3) of the SEBI Act since the prescribed mandatory procedure under Chapter V of the Intermediaries Regulations has been totally discarded [Paragraph 4.5(ix)].

9.1.2 The impugned SCN in the instant proceedings, has been issued under Sections 11 and 11B of the SEBI Act read with Regulation 35 of the Merchant Bankers Regulations. It is noted that Section 11(1) of the SEBI Act empowers SEBI to take such measures as it may deem fit in a given case in order to protect the interests of investors in securities or to promote and regulate the securities market. Section 11(2)(b) of the SEBI Act specifically enjoins upon SEBI to take appropriate measures for regulating the working of intermediaries associated with the securities market. Section 11(4)(b) of the SEBI Act confers upon SEBI a power to restrain persons from accessing the securities market and prohibit any person associated with the securities market to buy, sell or deal in the securities pending investigation or enquiry or on completion thereof. The only requirement is that such an order has to be in the interest of investors or for the orderly development of the securities market. Similar is the tone and tenor of Section 11B of SEBI Act, which deals with the power of the Board to issue directions.

9.1.3 Regulation 35 of Merchant Bankers Regulations clarifies that if a merchant banker violates the provisions of the SEBI Act, any action specified therein can be taken. By employing Shri Pawan Bansal who does not satisfy the '*fit and proper person*' criteria, Altius Finserv has violated Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant

Bankers Regulations. The continuous satisfaction of the criteria of '*fit and proper person*' is a condition of registration of the Merchant Banker. Section 12(1) of SEBI Act and Regulation 9A of the Merchant Bankers Regulations mandate a Merchant Banker to deal in securities only in accordance with the conditions of the Certificate of Registration. By virtue of violation of the '*fit and proper person*' criteria, the conditions of registration as Merchant banker has been breached. The aforesaid violation of Section 12(1) of the SEBI Act can be remedied by appropriate directions under Sections 11 and 11B of that Act.

- 9.1.4 At the same time, SEBI also has powers under Section 12(3) of the SEBI Act to suspend or cancel the Certificate of Registration in the manner as may be determined by the Intermediaries Regulations. Accordingly, Regulation 23 of the Intermediaries Regulations provides for the grounds under which the Certificate of Registration can be suspended or cancelled.
- 9.1.5 From a conjoint reading of the aforementioned provisions of the SEBI Act and the Merchant Bankers Regulations, I find that a subjective decision as to when and where and what manner of regulatory intervention is required, is the sole prerogative of SEBI provided such intervention is in the interest of investors or for orderly development of the securities market.
- 9.1.6 In the instant proceedings and as stated in the preceding paragraphs, Shri Pawan Bansal is the Managing Director and Key Management Person of Altius Finserv. Shri Pawan Bansal is also the substantial shareholder (almost 100%) in Altius Finserv and in that capacity, is in a position to exercise significant control and influence over that registered intermediary. The observations contained in the FIR registered by the CBI note that: "*in lieu of hiring their services the company provides a composite fee to M/s Altius Finserv Pvt. Ltd. This fee comprises of the consultancy charges of M/s Altius Finserv Pvt. Ltd. and the illegal gratification which is to be paid to the concerned bank officials directly or through their middlemen/ agents, for obtaining undue favours from them.*" From the aforementioned, it is clearly evident that Shri Pawan Bansal is alleged to have carried out undesirable and illegal activities through Altius Finserv.
- 9.1.7 In my considered opinion, only those persons satisfying the '*fit and proper person*' criteria should associate themselves with a registered intermediary functioning in the securities market. Such persons who are honest, diligent and independent-minded, who act ethically and with honesty and fairness are essential to the good reputation and trustworthiness of the securities market in general and of the registered intermediary in particular. If persons who do not satisfy the '*fit and proper person*' criteria are permitted to associate themselves with any registered intermediary functioning in the securities market, either in their capacity as Managing Directors or Key Management Person or on account of their substantial shareholding resulting in them exercising

significant control and influence over such registered intermediary, the integrity of the securities market and the interests of investors therein would be put to great risk. I, therefore, find it justified that Shri Pawan Bansal shall not be associated with any registered intermediary in order to maintain the integrity of the securities market and also for the protection of interests of investors in securities. Similarly, permitting Altius Finserv to function in the securities market as an intermediary in view of its association with Shri Pawan Bansal, may also cause prejudice to the interests of investors and the safety and integrity of the securities market. I am, therefore, of the considered opinion that in the interest of investors and for orderly development of the securities market, SEBI can issue appropriate directions under Sections 11 and 11B of the SEBI Act read with Regulation 35 of the Merchant Bankers Regulations, against Altius Finserv and Shri Pawan Bansal for non-satisfaction of the '*fit and proper person*' criteria and against Altius Finserv, for non-compliance with the provisions of Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant Bankers Regulations.

- 9.1.8 For the reasons detailed in the preceding paragraph, I am, therefore, convinced that the impugned SCN issued under Sections 11 and 11B of the SEBI Act read with Regulation 35 of the Merchant Bankers Regulations does not suffer from any legal infirmity as contended by Altius Finserv and Shri Pawan Bansal.
- 9.1.9 Incidentally, I note that an enquiry proceeding has also been initiated against Altius Finserv under Section 12(3) of the SEBI Act read with Section 23 of the Intermediaries Regulations for the alleged violation of Regulations 6(gg) and 6A of the Merchant Bankers Regulations read with Schedule II of the Intermediaries Regulations and Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant Bankers Regulations. The aforesaid proceedings may result in appropriate disciplinary proceedings against Altius Finserv if the allegations against that registered intermediary are proved in the enquiry proceedings.

Conclusion –

- 10.1 Under the SEBI Act, SEBI has been assigned a statutory duty to protect the interests of investors in securities and regulating the securities market by such measures as it may think fit. Accordingly, the Merchant Bankers Regulations and the Intermediaries Regulations, have been framed by SEBI in the discharge of this statutory obligation. The role of the Merchant Banker as a market intermediary is indeed very crucial, especially since it handles the business of issue management by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management. In this context, the satisfaction of the '*fit and proper person*' criteria is essential for

ensuring that business activities in the securities market are conducted with high standards of market practice and integrity. Accordingly, as envisaged in the '*fit and proper person*' criteria, SEBI has to take into account the financial integrity, honesty, good reputation and character of the applicant or intermediary and also the persons who hold responsible positions in such applicant or intermediary and are responsible for its activities and/or are in a position to influence the decision making process by virtue of their substantial shareholding in that applicant or intermediary or otherwise. Indeed, such a determination becomes very vital and imperative for safeguarding the integrity of the securities market and for ensuring that applicants/registered intermediaries providing financial services are soundly and prudently managed, directed and that none of the key management persons are a source of weakness to such applicants/registered intermediaries. Therefore, important facts such as registration of FIR and subsequent arrest of Shri Pawan Bansal, cannot be ignored while considering the eligibility of Altius Finserv to continue as a Merchant Banker.

- 10.2 In view of the preceding paragraphs, I, therefore, have no hesitation in concluding that Shri Pawan Bansal and Altius Finserv do not comply with the eligibility criteria of being a '*fit and proper person*' in accordance with the Merchant Bankers Regulations read with the Intermediaries Regulations. Further, in view of the aforesaid, I find that Altius Finserv has failed to comply with the provisions of Clause 28 of the Code of Conduct contained in Schedule III read with Regulation 13 of the Merchant Bankers Regulations.

Order –

- 11.1 Having regard to the above discussion, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act read with Sections 11 and 11B of the SEBI Act read with Regulation 35 of the Merchant Bankers Regulations, hereby direct as follows –
- i. Shri Pawan Bansal [PAN: ACFPB2226A], Managing Director and Key Management Person of Altius Finserv, is restrained from associating himself, either directly or indirectly, with any intermediary or holding any controlling shareholding in any intermediary till such time he is freed by the Competent Court, of the charges alleged in the FIR (FIR no. RC-AC1-2014-A0005) registered against him, by the CBI on August 1, 2014.

- ii. SEBI shall not consider any application of Altius Finserv Private Limited [Registration No. INM000011732; PAN: AAACU3953D], for a Certificate of Registration to act as an intermediary in any capacity till such time
 - a. Shri Pawan Bansal is freed by the Competent Court of the charges alleged in the aforementioned FIR and
 - b. Holds office in Altius Finserv Private Limited as Managing Director or Key Management Person or holds controlling shareholding therein.

11.2 This Order shall come into force with immediate effect.

11.3 This Order shall be served on all Recognized Stock Exchanges and Depositories to ensure necessary compliance.

Place: Mumbai
Date: March 17, 2016

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