

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 (Investment Advisers) Regulations, 2013 and SEBI (Research Analysts) Regulations, 2014 in respect of Motivate Financial Services Private Limited (PAN: AAFCM2945H) and its directors, Mr. Nitin Hirji Babaria (PAN: AQMPB6547K), Ms. Komal Rajendra Prasad Jaiswal (PAN: AVQPJ6443B) and Ms. Devuben Hirji Babaria (PAN: AQMPB6551H).

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1. Securities and Exchange Board of India ("**SEBI**") received a complaint on December 14, 2015 alleging that Motivate Financial Services Private Limited ("**MFS**") contacted the complainant over telephone and offered investment advice and upon refusal to accept the same, MFS used offensive language.
 - 2.1 As a matter of preliminary inquiry, SEBI vide letters dated January 14, 2016 and January 27, 2016, sought the following information along with the supporting documents from MFS viz:-
 - a. *"Registered/ corporate addresses of MFS along with the telephone numbers, legal structure and PAN;*
 - b. *Names, addresses, PAN and telephone numbers of its promoters/ directors;*
 - c. *List of all the securities/ investment activities undertaken by MFS;*
 - d. *Since when the MFS is in the business of investment advisory/ research analyst;*
 - e. *The following details year wise in a tabular format, viz:-*
 - i. *Package/ service offered by MFS to its clients;*

- ii. *Number of clients to whom they have provided the package/ service;*
- iii. *Total amount of money collected from the aforesaid clients as fees during the year.*
- f. *List of clients and fee charged for various products/ services offered by MFS;*
- g. *Details of the SEBI registration, if any obtained by MFS;*
- h. *A copy of the audited annual accounts for previous three financial years;*
- i. *A copy of account statements of all its bank accounts for the last three financial years;*
- j. *Details of the website, person responsible for hosting and maintaining such website.”*

The letters sent to MFS were returned undelivered with the remarks “*no such person*”.

2.2 SEBI noted the bank account details (Axis Bank) of MFS on its website and vide email dated February 04, 2016 sought information about MFS from Axis Bank. In response, Axis Bank vide e-mail dated February 11, 2016 provided the account opening form, KYC documents and bank statements of MFS.

2.3 As the letters sent to the registered address of MFS had got returned undelivered, SEBI issued letters dated February 12, 2016 and February 26, 2016 to MFS on the addresses noted from the bank statements and KYC documents. Vide letter dated February 26, 2016, SEBI also sought information regarding the company from one of its directors viz., Mr. Nitin Hirji Babaria (“**Nitin Babaria**”). Further, an email dated February 26, 2016 was also sent to MFS seeking the same information.

2.4 The aforesaid letters sent to MFS were returned undelivered. However, Nitin Babaria vide his reply dated nil received on March 01, 2016, *inter alia*, furnished the following information:

- a. *“PAN of MFS and Nitin Babaria and Aadhaar No. of Nitin Babaria;*
- b. *Bank statements of MFS for the period from February 01, 2015 to March 01, 2016;*
- c. *List of telephone numbers of the clients of MFS.”*

- 2.5 Since the information furnished by Nitin Babaria was found to be incomplete, SEBI vide email dated March 14, 2016 advised MFS to submit the remaining information sought vide letter dated February 26, 2016.
- 2.6 In response thereto, MFS vide letter dated nil received on March 21, 2016, submitted the following:
- a. MFS started its business since February 2015.
 - b. There are no fees fixed for the services rendered to the customers as the same depends on the customer's capital.
 - c. Data of the customers are not maintained by MFS. However, MFS submitted a list of all the bank transactions wherein fees has been received from its clients.
 - d. MFS is not registered with SEBI and that all activity has been stopped since e-mail was received from SEBI. The website of MFS was also closed down.
- 2.7 Vide email dated March 22, 2016, MFS also submitted the Memorandum and Articles of Association (“**MoA**”), and Certificate of Incorporation.
- 2.8 SEBI vide email dated April 07, 2016 advised Nitin Babaria to submit all his bank account statements and income tax returns for the last 3 years. In response, Nitin Babaria submitted his bank account statements vide letter dated nil received on April 18, 2016 and income tax returns vide letter dated nil received at SEBI on April 21, 2016.
- 2.9 Thereafter, vide letter dated June 01, 2016, Nitin Babaria, *inter alia*, submitted the following:
- a. *“I had purchased Motivate Financial Services Pvt. Ltd. from Mr. Sandip Sitani for Rs. 25,000/- vide MoU and other legal documents;*
 - b. *I am running this business since 2014 and I had a total of 60-70 clients and earned a total of 5-6 lakhs from this business. From the past couple of months I have done no business and I am not charging or doing any stock advisory business;*
 - c. *My qualification is SSC failed (Mark sheet enclosed).”*

- 2.10 SEBI vide email dated June 15, 2016 and a reminder dated June 21, 2016 advised MFS to submit the MoU entered between Nitin Babaria and Mr. Sandip Sitani. Nitin Babaria vide email dated June 21, 2016 forwarded the MoA and Certificate of Incorporation of MFS which was submitted earlier vide email dated March 22, 2016. However, the information regarding the purchase of the company has not been submitted by Nitin Babaria till date.
3. I have perused the materials available on record such as investor complaints, information available on the website of MFS, information obtained from Axis Bank, correspondence exchanged between SEBI and MFS and its Director viz., Nitin Babaria, submissions and documents furnished by them, etc. On an examination of the material available on record, it is *prima facie* observed:-
- i. MFS(CIN:U67190MH2007PTC169567) was incorporated on April 02, 2007 having its registered office at Shop No 17, Annex Mall, Near Sai Dham Temple, Borivali (E), Mumbai – 400066. The Directors of MFS are Mr. Nitin Hirji Babaria (PAN: AQMPB6547K), Ms. Komal Rajendraprasad Jaiswal (PAN: AVQPJ6443B) and Ms. Devuben Hirji Babaria (PAN: AQMPB6551H).
 - ii. As per the Memorandum of Association of MFS, the main objectives of MFS are “ *to carry on the business as consultants, advisers for financial products and financial agent, brokers, adviser for shares, government securities and investments consultants in these matters & to provide consultancy services for including financial investment, management and making of surveys and reports thereon and to manage the investment portfolios of various individuals, firms, companies to offer, give, take, circulate and or otherwise accept or implement advisory services relating to shares and securities of all kinds including but not limited to options, derivatives, currency swaps.*

- iii. The details of the packages offered by MFS to its clients and the fees collected for the same as observed from its website (which has been subsequently closed and not now operational) are as under:

Name of package	Fee charged (Rs.)	
	1 month	3 months
Premium Intraday	11,000	
Stock Intraday	5,000	
Stock Future	9,000	
Delivery		15,000
Commodity Intraday	5,000	
HNI Services	25,000	

- iv. From the details of fees collected from clients of MFS, it is observed that during the period from February 01, 2015 to February 24, 2016, MFS had collected an amount of ₹ 5,19,905/- in 62 transactions for various advisory services rendered to its clients.

4.1 In the light of the above analysis and examination, it is evident that:

- i. The activities of MFS of giving trading tips, stock specific recommendations, etc. on payment of fees as discussed in the preceding paragraphs, clearly indicate that it is engaged in providing "*investment advisory services*" to investors on payment of fees as discussed in the preceding paragraphs, which *prima facie* fall under the definition of "*investment adviser*" as defined by Regulation 2(m) of the SEBI Investment Advisers Regulations, 2013 (**Investment Advisers 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;"

- ii. Further, the activities of MFS of offering stock market ideas, giving price target and making buy/sell/hold recommendation to investors on payment of fees as observed from their website, also indicate that it is engaged in providing the services of a "*research analyst*", which *prima facie* fall under the definition of "*research analyst*" as defined by

Regulation 2(u) of the SEBI (Research Analysts) Regulations, 2014 (**Research Analysts Regulations**), which reads as under:

“research analyst” means a person who is primarily responsible for,-

i. preparation or publication of the content of the research report; or

ii. providing research report; or

iii. making 'buy/sell/hold' recommendation; or

iv. giving price target; or

v. offering an opinion concerning public offer,

with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis.”

4.2 In order to protect the interests of the investors, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act and the relevant Regulations made thereunder. Section 12(1) of the SEBI Act, 1992 reads as under:

" 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."

4.3 Further, as per Regulation 3(1) of the SEBI Investment Advisers Regulations, the registration of the investment advisers is mandatory. It provides that:

"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."

4.4 Similarly, as per Regulation 3(1) of the SEBI Research Analysts Regulations, the registration of the research analysts is also mandatory. It provides that,

“On and from the commencement of these regulations, no person shall act as a research analyst or research entity or hold itself out as a research analyst unless he has obtained a certificate of registration from the Board under these regulations.”

5. In this context, it is noted that MFS and its directors are not registered with SEBI in any capacity, either as an *investment advisor* or as *research analyst*. The characteristics and features of the business activity carried out by MFS as discussed in the preceding paragraphs *prima facie* leads to the conclusion that the entity is providing services of investment adviser as defined in Regulation 2(m) of the SEBI Investment Adviser Regulations and the services of a Research Analyst as defined in 2(u) of the SEBI Research Analysts Regulations. As a result of the aforesaid activities, I am convinced that *prima facie* MFS and its Directors viz., Mr. Nitin Hirji Babaria, Ms. Komal Rajendraprasad Jaiswal and Ms. Devuben Hirji Babaria have violated the provisions of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of SEBI Investment Advisers Regulations and Regulation 3(1) of SEBI Research Analysts Regulations.
6. It is relevant to note that Investment Advisers Regulations and Research Analysts Regulations *inter alia* provide the framework for regulating the activity of entities who are in the business of providing investment advice, preparation or publication of the content of research report, making buy/sell/hold recommendation, etc. in respect of securities and investment products. The Regulations seek to create a standardized operating structure within which investment advisers and research analysts will operate and also make them duly accountable for their investment advice and research reports and ideas by requiring them to comply with the criteria set out in the relevant provisions of the relevant Regulations, such as having the prescribed professional qualifications, certifications from competent authorities, conforming to fit and proper criteria, satisfying capital adequacy requirement, adequate infrastructure facilities, etc. In view of this, subjecting the investment advisers and research analysts to the statutory requirement of registration with SEBI is imperative for the protection of interests of investors and to safeguard the integrity of securities market.

In the instant case, MFS and its directors have solicited and induced investors to deal in securities on the basis of their investment advice, stock trade tips, ideas, etc. on its

website. In view of this, it is apprehended that investors at large could be misled on account of such unauthorized activities of such unregistered entities.

7. SEBI has been entrusted with the duty to protect the interests of investors and protect the integrity of the securities market. Considering the facts and circumstances of the present matter and on the basis of *prima facie* findings, it is necessary to intervene in this matter to take immediate steps to prevent such persons from further misleading investors and prevent them from indulging in unauthorized investment advisory or research analyst activities without due registration from SEBI. I am convinced that this is also a case where, effective and expeditious action is required to be taken to prevent any possible harm to investors caused by the unauthorized activities of the entities *viz.* Motivate Financial Services Private Limited and its Directors *viz.* Mr. Nitin Hirji Babaria, Ms. Komal Rajendraprasad Jaiswal and Ms. Devuben Hirji Babaria.
8. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11B and 11D of the SEBI Act, by way of this ad-interim ex-parte order –
 - i. *direct Motivate Financial Services Private Limited (PAN: AAFCM2945H) and its directors, Mr. Nitin Hirji Babaria (PAN: AQMPB6547K), Ms. Komal Rajendraprasad Jaiswal (PAN: AVQPJ6443B) and Ms. Devuben Hirji Babaria (PAN: AQMPB6551H) to:-*
 - a. *cease and desist from acting as an investment advisor or research analyst and cease 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 investors, kept in bank account(s) and/or in their custody;*
 - c. *immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. if any, in relation to their investment advisory and research analyst activity or any unregistered activity in the securities market.*

9. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entities, *viz.* Motivate Financial Services Private Limited and its directors in accordance with law.
10. This Order shall be treated as a show cause notice and Motivate Financial Services Private Limited and its aforementioned directors may show cause as to why the investment plans and existing schemes identified in this Order should not be held as "*Investment Advisory Services*" and "*Research Analyst Services*" in terms of the respective Regulations and why appropriate directions, under Section 11 and 11B of the SEBI Act, 1992 and relevant SEBI Rules/Regulations prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and to refund the amount collected from the investors/clients/partners for its existing schemes should not be issued against them.
11. The above directions shall take effect immediately and shall be in force until further orders.
12. Motivate Financial Services Private Limited and its directors *viz.*, Mr. Nitin Hirji Babaria, Ms. Komal Rajendra Prasad Jaiswal and Ms. Devuben Hirji Babaria, may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire 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: November 04, 2016

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