

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In continuation of orders dated December 19, 2014 and August 25, 2016 passed under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992

In respect of representation of: -

- 1 **Mr. Ketan Dhirajlal Kapasi** **PAN: AABPK6452F**
- 2 **Mr. Vimal Arvind Kapasi** **PAN: ADQPK1014P**

In the matter of First Financial Services Limited

Background:

1. Securities and Exchange Board of India ("SEBI"), vide an *ad interim ex-parte* order dated December 19, 2014 in the matter of trading in shares of First Financial Services Ltd (hereinafter referred to as "interim order") restrained 152 entities, including Mr. Ketan Kapasi and Mr. Vimal Kapasi (hereinafter referred to as "Noticees"), from accessing the securities market and further prohibited them from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, till further directions. The persons/ entities against whom the *interim order* was passed were advised to file their objections, if any, within twenty one days from the date of the order and, if they so desire, to avail an opportunity of personal hearing before SEBI.

2. It was alleged in the interim order that the Noticees subscribed to the shares of First Financial Services Ltd (75,000 shares each) through preferential allotment and subsequently, after the lock-in period of one year, sold them in the market at artificially inflated price to the entities who were alleged to be connected to First Financial Services Ltd. in order to generate fictitious long term capital gains by misusing stock exchange mechanism. In the process allegedly they made gains to the tune of approximately ₹.2.2 crore each and converted their ill-gotten gains into genuine one. The Noticees filed their reply in response to the interim order

and appeared for hearing. SEBI after considering the submissions confirmed the *interim* directions *qua* the Noticees amongst others, vide order dated August 25, 2016 (hereinafter referred to as “confirmatory order”), pending investigation, subject to certain reliefs as below:

- a) enter into delivery based transactions in cash segment in the securities covered in NSE Nifty 500 Index scrips and/ or S&P BSE 500 scrips;
- b) subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;
- c) deal in Debt/ Government Securities;
- d) invest in ETF;
- e) avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.;
- f) tender the shares lying in their demat account in any open offer/delisting offer under the relevant regulations of SEBI;
- g) permitted to sell the securities held in the demat account as on the date of the interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange, in orderly manner under the supervision of the stock exchanges so as not to disturb the market equilibrium and deposit the sale proceeds in an interest bearing escrow account with a nationalized bank;
- h) deal with or utilize the sale proceeds lying in the aforesaid escrow account under the supervision of the concerned stock exchange as provided under:-
 - (i) the sale proceeds may be utilised for investments permitted above;
 - (ii) up to 25% of the value of the portfolio as on the date of the interim order or the amount* in excess of the profit made /loss incurred or value of shares purchased to give exit, whichever is higher, may be utilized for business purposes and/or for meeting any other exigencies or address liquidity problems etc.

3. The Noticees filed Appeal No. 403 of 2016 before the Securities Appellate Tribunal (SAT) challenging the aforementioned confirmatory order dated August 25, 2016. During the pendency of the appeal, Noticees sought permission from SAT to make an application before SEBI for seeking additional relief. The Hon'ble Tribunal vide order dated December 22, 2016 permitted the Noticees to make an application before SEBI seeking additional relief within a period of one week and directed SEBI to consider such application and pass appropriate order within a period of four weeks from the date of receiving the application.

Submissions of the Noticees:

4. Noticees have filed their representation vide letter dated December 30, 2016 seeking relaxation in the interim directions. They have provided certain clarification vide email dated January 6, 2017. The Noticees were granted an opportunity of hearing on January 11, 2017. Mr. Nirman Sharma, Mr. Samit Shukla and Mr. Nausher Kohli, Advocates from DSK Legal and Mr. Ketan Kapasi appeared for hearing and reiterated the submissions made in their representations. The contentions in the representation and submissions of the Noticees made during the hearing are summarised hereunder:

- a) The Noticees have submitted that they are unable to invest in mutual funds as their order was getting rejected on the ground that PAN is banned, although they have been permitted to invest in mutual funds vide order dated August 25, 2016.
- b) With regard to the additional relief of seeking permission to deal in the currency derivatives on the exchange platform, it was submitted that the Noticees are the shareholders and directors of Sodium Metal Pvt. Ltd. and partners of the three firms, namely, NR Oils, Kalpsutra Gujarat and Tide Industries. These concerns/group entities are engaged in the business of manufacturing specialty chemicals, flavour and fragrance chemicals which are sold in India as well as exported outside the country. As per the details submitted by the Noticees, the percentage contribution of exports to the total turnover of these entities was between 19.35% and 25% during the financial years 2013-2014 to 2015-2016.

- c) As part of their business activities, these entities enter into various transactions for the purpose of export and import resulting in substantial foreign exchange exposure. As a result, they are required to enter into foreign exchange hedging transactions offered at various stock exchanges such as NSE, MCX etc. in order to hedge their foreign exchange risk. To show that they have entered into such transaction earlier, the Noticees have filed two contract notes dated December 10, 2013 issued by Globe Capital Markets Ltd. for trades done in the USD-INR currency futures contracts on behalf of Sodium Metals Pvt. Ltd. and NR Oils.
- d) On December 2, 2016, the Noticees had contacted their securities broker Market Creators Limited, for the purpose of entering into transaction for hedging the import bill of Sodium Metals Pvt. Ltd. However, the broker vide letter dated December 6, 2016 informed the Noticees that because of the interim order they will not be able to trade on their behalf.
- e) It has been submitted by the Noticees that on account of operation of the *interim order* and *confirmatory order* they are unable to mitigate the foreign exchange risk for last two years. They are incurring losses as they are unable to promptly enter into hedge transactions against any possible fluctuations in forex markets to protect their day to day business which includes import /export transactions.
- f) It has been also submitted that on November 9, 2016 the Government of India demonetised ₹500 and ₹1000 notes. This policy of the government caused huge fluctuations in the share prices of companies in certain sectors, however, they have been unable to capitalise on the opportunities available in the market on this account due to the restraint order.
- g) There is no rationale for exclusion from participating in IPOs.
- h) The direction or restraints of *interim order* and *confirmatory order* are against the Noticees and cannot be extended to their group entities which are not alleged of any wrong doing in the matter. As these companies/firms are suffering for more than 2 years and investigation is going to take a long time, these companies /firms may be allowed to

freely transact on the stock exchange and access the capital market till completion of the investigation.

5. Subsequent to the hearing, the Noticees were advised to give details of their foreign exchange risk exposure and the mechanism adopted by them to hedge the forex market risk since 2012-2013. The Noticees have submitted the same vide email dated January 20, 2017. The details are given in the table below.

Name of the entities	Export Turnover (in Rupees Lacs)	Import Turnover (in Rupees Lacs)	Turnover in Currency derivative on exchange (in Rupees Lacs)	Turnover in Currency covered in bank (in Rupees Lacs)
2012-2013				
Sodium Metal Pvt Ltd	425.00	2,234.45	1,906.71	-
NR Oils	66.74	78.60	7,738.16	-
Kalpsutra Gujarat	-	450.06	-	-
Tide Industries	189.99	1,495.95	-	159.14
Total	682	4,259.06	9,644.87	159.14
2013-2014				
Sodium Metal Pvt Ltd	805.00	3,033.47	13,268.43	1,183.11
NR Oils	-	21.69	13,319.93	-
Kalpsutra Gujarat	24.46	868.29	-	-
Tide Industries	195.41	2,214.71	-	57.48
Total	1,024.87	6,138.16	26,588.36	1,240.59
2014-2015				
Sodium Metal Pvt Ltd	912.58	4,325.64	-	788.42
NR Oils	179.61	11.93	-	-
Kalpsutra Gujarat	-	374.46	-	28.23

Name of the entities	Export Turnover (in Rupees Lacs)	Import Turnover (in Rupees Lacs)	Turnover in Currency derivative on exchange (in Rupees Lacs)	Turnover in Currency covered in bank (in Rupees Lacs)
Tide Industries	220.43	2,211.42	-	544.82
Total	1,312.62	6,923.45	-	1,361.47
2015-2016				
Sodium Metal Pvt Ltd	678.34	2,859.09	-	-
NR Oils	500.22	141.06	-	-
Kalpsutra Gujarat	-	409.71	-	-
Tide Industries	193.50	1,899.63	-	163.93
Total	1,372.06	5,309.49	-	163.93

Consideration of issues:

6. I have considered the written and oral submissions of the Noticees in support of their representation and have perused the relevant documents available on record. As regards the grievance of the Noticees about operationalization of the relaxations granted vide order dated August 25, 2016, it has been ascertained that the following measures have been taken.

- a) Frequently Asked Questions (FAQs) detailing the procedure to be followed by the debarred entities for availing the relaxations granted vide order dated August 25, 2016 have been disseminated by the Exchanges on their respective websites along with the dedicated e-mail id and contact details of the exchange official for addressing the queries of debarred entities, if any. Additionally, notice was issued by exchanges informing the trading members about the procedure for implementation of relief.

- b) With respect to the inability of the Noticees to invest in mutual fund, BSE has spoken to Mr. Ketan Kapasi as well as his securities broker - Jhaveri Securities Ltd. BSE vide e-mail dated January 20, 2017 has confirmed that they have explained in detail the procedure to be followed by them for availing the relaxations granted vide the confirmatory order and that it has not kept open any issue with respect to the implementation of the additional relief.

7. As such, it appears from the records, including the e-mail of SEBI to Mr. Ketan Kapasi dated January 21, 2017, that the issue of operationalisation of the interim reliefs granted to the Noticees stand suitably redressed. With regard to the present application of the Noticee, the limited issue for my consideration, at this stage, is whether or not to allow the Noticees and their group concerns to trade in currency derivative segment on stock exchanges for hedging their foreign exchange risk. During the hearing the Noticees did not press for other reliefs contained in the representation, therefore, they are not taken up for consideration.

8. Based on their submissions, I note that the Noticees are the shareholders and directors of Sodium Metal Pvt. Ltd. and partners in NR Oils, Kalpsutra Gujarat and Tide Industries. As part of the business activity of these group entities of the Noticees, they enter into various export and import transactions. The aggregate annual export and import turnover of these four entities, as submitted by the Noticees, was ₹ 66.81 Crore during 2015-2016, ₹ 82.35 Crore during 2014-2015, ₹ 71.62 Crore during 2013-2014 and ₹ 49.41 Crore during 2012-2013.

9. Companies or business enterprises dealing in foreign currencies on account of their import and export transactions are exposed to foreign exchange volatility risk. They normally hedge such forex risks by taking positions in currency futures proportionate to their business requirements. Currency derivatives are always cash settled without involving physical delivery of foreign currency. The actual requirement of foreign currency is eventually met from the OTC market. Generally, a trader who is seen to take positions only in the derivatives market on the exchange unsupported by corresponding transactions in the OTC segment can be stated to be merely speculating as it does not evidence a genuine business requirement and much less a hedge to cover up expected losses arising out of such requirement.

10. In the case of these four entities, I find that Sodium Metals Pvt. Ltd. and NR Oils have been taking huge positions in the exchange traded currency derivatives running into approximately ₹19 Crore and ₹ 77 Crore during 2012-2013 respectively and ₹ 133 Crore each during 2013-2014. These positions do not bear any relation to the aggregate export-import turnover. Moreover, there is no equivalent or corresponding transactions in the OTC market with the banks for the respective years as seen from the table at para 5 above. In other words, there is no correlation either between the turnover from the export-import business vis-à-vis the contracted exposure in forex derivatives or the quantum traded on the exchange traded currency derivatives vis-à-vis the trades in the OTC - bank segment. It is also observed that Kalpsutra Gujarat and Tide Industries have not taken any position in currency derivatives segment of exchanges, instead may have partially hedged their forex risk by subscribing to OTC products available at banks. From the facts and figures, it is observed that the Noticees, through its group entities named above, appear to have taken predominantly speculative positions in currency derivatives on exchanges.

11. Recently, the Noticees have moved the SAT and thereafter approached SEBI illustrating their compelling business reasons behind the permission sought to trade in currency derivatives.

Directions:

12. In appreciation of the facts and circumstances of the matter and the imminent business requirement, I am inclined to grant the relief, without revoking any direction against the Noticees in the confirmatory order dated August 25, 2016 read with the order dated December 19, 2014, subject to the following conditions:

- a) that the group entities of the Noticees, namely, Sodium Metal Pvt. Ltd., NR Oils, Kalpsutra Gujarat and Tide Industries may trade in currency derivatives over the exchange platform in such a manner that their aggregate turnover shall not exceed ₹70 Crore annually. This figure has been arrived on the basis of the average of the aggregate export and import turnover of the entities for the last four financial years;
- b) that the group entities of the Noticees shall avail the above relaxation through only one intermediary and one exchange; and,

- c) the Noticees shall provide periodic certification about their compliance with the above conditions through their intermediary to the concerned exchange.

13. The annual limit prescribed at para 12(a) above shall be monitored by the concerned exchange. In case of any failure to comply with any of the above conditions, the permission granted in para 12 above shall stand revoked automatically.

14. It is also clarified that the permission granted above is subject to suitable modifications depending upon the findings of the investigation about the role and involvement of the Noticees in the alleged irregularities and the desirability to continue with such permissions in the interest of the securities market and the investors.

15. A copy of this order shall be served upon the Noticees and the stock exchanges for ensuring compliance with the above direction.

-Sd-

Date: January 27, 2017

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER