

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Section 11(1) and 11B of the Securities and Exchange Board of India Act, 1992 in respect of Orion Capital and Debt Market, Orion Broking Services India Private Ltd., Mr. Johnson Puthiaparambil Jose(PAN: AFZPJ2029Q), Mrs. Cinzy Johnson (PAN: AHNPC5874A) and Mr. Joseph Puthiaparambil Chacko (PAN: AKUPJ0403G).

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1. Securities and Exchange Board of India (“SEBI”) came across a news report which appeared on April 23, 2015 in the newspaper ‘The Hindu’ (Chennai Edition) in respect of Orion Capital and Debt Market (“**Orion Capital**”). It read “***CB-CID likely to investigate a ‘multi-crore online trading scam’***”. It was also reported that Central Crime Branch of Police (Chennai) had booked the proprietor of Orion Broking, Mr. Johnson P Jose, his wife Mrs. Cinzy Johnson as well as Orion Capital’s staff under Sections 120B (criminal conspiracy), Section 420 (cheating and dishonestly inducing delivery of property) and Section 409 (criminal breach of trust by public servant, or by banker, merchant or agent) of the Indian Penal Code.
 2. Orion Capital is a SEBI registered Stock Broker in Equity, Futures and Options and Currency Derivatives segments of National Stock Exchange of India Ltd (“**NSE**”; Registration Nos. INB231465627, INF231465627 and INE231465627), Orion Capital is also a member of BSE Limited (“**BSE**”; Registration Nos. INB011465623 and INF011465623) and Metropolitan Stock Exchange of India Ltd (“**MSEI**”; formerly known as MCX Stock Exchange Limited; Registration Nos. INB261465620, INF261465620 and INE261465627).
 3. SEBI also received a copy of notice dated August 24, 2015, issued by Office of the Inspector of Police, Cyber Crime Cell, Coimbatore against Orion Broking Services India Private Ltd (“**Orion Broking**”) for misappropriation of funds, shares and securities and commodities holding of its clients in Coimbatore and other places.

4. Orion Broking is an associate company of Orion Capital. Orion Broking is a Member of Multi Commodity Exchange of India Ltd. (“**MCX**”; FMC Unique Code (FUC): MCX/TM/CORP/1875), National Commodity and Derivatives Exchange Ltd. (“**NCDEX**”; FUC: NCDEX/TCM/CORP/1055), National Multi-Commodity Exchange of India Ltd. (“**NMCE**”; FUC: NMCE/TCM/CORP/0402), ACE Derivatives and Commodity Exchange Ltd. (“**ACE**”; FUC: ACEL/TM/CORP/0180) and Universal Commodity Exchange Ltd. (“**UCX**”; FUC: UCX/TM/CORP/0086) in the commodities market.
 - Orion Capital and Orion Broking have the same registered office at 1068, 1st Floor, Shanmugam Complex, MTP Road, Coimbatore – 641002 and Corporate office at Door No. 1, Next to Crompton & Greaves Ltd., M.K. Complex East, 3rd floor, Periyasamy Road, Coimbatore – 641002.
 - Mr. Johnson Puthiarambil Jose and Mrs. Cinzy Johnson are Managing Partners and Mr. Joseph Puthiarambil Chacko a partner of Orion Capital. Mr. Johnson Puthiarambil Jose and Mrs. Cinzy Johnson are Promoters and Directors of Orion Broking.
5. Upon preliminary inquiry by SEBI with Exchanges and Depositories, it was observed that Orion Capital and Orion Broking had (i) failed to redress numerous investor grievances pertaining to non- settlement of funds, securities, and balances due to their clients; (ii) failed to implement the investor claims admitted by Investor Grievance Resolution Panel and Awards passed by Arbitrators (iii) issued false and untrue statement to its clients (iv) abruptly closed their business without intimation to the stock exchanges or clients and absconded; etc.
6. As the aforesaid activities of Orion Capital and Orion Broking were *prima facie* in violation of the requirements and conditions of registration as specified under Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (“**Brokers Regulations**”) read with clauses A(1), A (3), A(5) and B(1) of Schedule II , SEBI passed an *ad interim ex-parte* order dated March 18, 2016 with the following directions:
 - i. “Orion Capital and Debt Market (PAN: AACFO9456G), Orion Broking Services India Pvt. Ltd. (PAN AABCO2694L), Mr. Johnson P. Jose (PAN: AFZPJ2029Q), Ms. Cinzy Johnson (PAN: AHNPC5874A) and Mr. Joseph P. C. (PAN: AKUPJ0403G) are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions

- ii. *The aforesaid entities and persons shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;*
 - iii. *The aforesaid entities and persons are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of their bank and demat accounts within 5 working days from the date of receipt of this order.*
 - iv. *The aforesaid entities and persons are directed not to dispose off or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets except with the prior permission of SEBI”.*
7. The said ex-parte order cum show cause notice provided that Orion Capital and Orion Broking and their Partners/Directors may file their objections, if any, within twenty one (21) days from the date of receipt of the said interim order. The order further provided that they may avail an opportunity of personal hearing before SEBI on a date and time to be fixed on a specific request in writing.
 8. Vide separate letters dated March 29, 2016, the ex-parte order cum show cause notice (“SCN”) was sent to Orion Capital and Orion Broking and their Partners/ Directors viz., Mr. Johnson Puthiaparambil Jose, Ms. Cinzy Johnson and Mr. Joseph Puthiaparambil Chacko (collectively referred to as the Noticees and individually by their respective names) by Speed Post with acknowledgment (SPA). The order sent to Orion Broking, Orion Capital and one of its partners viz., Mr. Joseph Puthiaparambil Chacko got returned undelivered with remarks “*addressee moved*”. In view of the same, the ex-parte order cum SCN was affixed at the last known addresses of Orion Capital, Orion Broking and Mr. Joseph Puthiaparambil Chacko. Further, the ex-parte order cum SCN sent to Ms. Cinzy Johnson got returned undelivered with remarks “*addressee left; relatives refused to take delivery of this SPA*”. However, the same was hand delivered to Ms. Cinzy Johnson on September 09, 2016 through the Kochi Office of SEBI.
 9. In response to the SCN, Mr. Johnson Puthiaparambil Jose (“**Mr. Johnson**”) vide letter dated September 2016 submitted that he was in jail till first week of June and his property, bank accounts, offices were frozen by Crime Branch-Criminal Investigation Division (“**CB-CID**”) and residence sealed by them. In view of this, Mr. Johnson sought extension of time to reply till he would get access to his office. Mr. Johnson also mentioned the following additional facts in the ex-parte order:
 - “Mr. P.C. Joseph has retired from Orion Capital on April 1, 2015.

- *Ms. Cincy Johnson is not the managing partner of Orion Capital. As per the initial deed she was managing partner, however, at the time of starting the business, her role was changed to sleeping partner. These changes and revised deed also updated to the exchanges.”*

Mr. Johnson also provided his e-mail address i.e. johnsonputhiyaparampil@hotmail.com for further communication.

10. Thereafter, an opportunity of personal hearing was granted to all the Noticees on July 05, 2017 and same was communicated to Mr. Johnson vide e-mail dated June 05, 2017. However, vide e-mail dated July 04, 2017, Mr. Johnson expressed his inability to attend the personal hearing on account of personal issues and submitted the following written submissions on behalf of all the Noticees:

- i. *“I was doing business decently from inception both in commodity and capital market. During 2013 budget, Central Government implemented new commodity transaction tax, with that I was having high operation cost. I was doing around 500 crore volume in MCX before CTT implementation, my business started falling after the implementation of tax, I was having huge operation loss for last two years, in addition to that I had following problems also:*
 - *I was providing high intraday exposure for clients in all segments, to increase my volume, this resulted in lot of bad debts;*
 - *In NSE cash segment, I was allowing clients to take delivery above the actual cash margin.. My staff could not handle effectively the delivery and fund settlement mechanism. This resulted in accumulating huge funding to clients and this excess funding to clients for buying shares very badly affected my liquidity;*
 - *My system department staffs done some fraudulent activity in my back office software, this resulted in leakage of funds, they were deleting actual MTM file and updating the manually altered MTM file in my back office, This process they were doing after I do the reconciliation. Actually my reconciliation was not proper, we used to do some pay in entry adjustments to avoid exchange margin shortfall penalties in NSE-FO and commodity segment, so I couldn't also trace out the problem earlier. A week back I got some information about this, then a few staff and clients destroyed the proofs. Hence, I am not able to get an exact figures about the money I lost due to this.*
 - *In addition to the above problem staff also done some fraudulent activities in DP. I have identified few incidents clients gone short in NSE Cash segment without having shares in their own DP or with our Beneficiary account, but my staffs cleared the delivery to the exchange by adjusting some*

other clients' shares available in our beneficiary account. This resulted in credit balance in clients account and they took payout like a regular client.

- *When I was in crisis, my competitors spread news saying that company is going to close, this resulted in huge withdrawals on single day and lot of unknown people entered my office and created some problems and damaged my servers.*
- ii. *I have not intentionally shut my office, I was outside for arranging the funds for the pay-out, I used to give pay-out on the same day, since the pay-out was delayed, people started coming to office in groups, so my staff were forced to close the office. After that I was having a life threat, I was scared to come to Coimbatore, I was trying my level best to arrange the funds and open the office, but news spread that I looted clients' fund and escaped. Then I started trying to get the Anticipatory Bail, finally CB-CID arrested me on 8th March 2016 from Gundelpet in Karnataka. I was in Jail for more than four months, I have opened few offices and all the hard disc from systems removed by someone. My house owner opened my house without my presence and sold all house hold items to settle my Rent pending, I lost all the backup CD's and hard drives kept at home.*
- iii. *I don't have the actual clients balance with me, so I am not able to confirm the claim amount mentioned in the order. I feel it's on higher side than the actual, I think the clients claimed the total share value they purchased irrespective of amount payable to me, because amount receivable alone was around 2.05 crores and as I remember the client balance in NSE was between 3 –4 crores during July ending. In August, we didn't get much pay-in because of low intraday limit and only pay-out was huge during this days."*

Mr. Johnson also provided a rough estimate of cash and assets that can be used for settling the clients' dues. In addition to the above, Mr. Johnson also provided details such as client receivable in Orion Broking is approximately Rs.3.4 crores and an amount of Rs.2.5 crores in Orion Capital.

11. The issues that arise for consideration in the present case is whether Orion Capital and Orion Broking and their Partners/Directors on account of its various acts and omissions acted detrimental to the interest of the investors and also violated the conditions of registration as specified under regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 ("Brokers Regulations") read with clauses A(1), A (3), A(5) and B(1) of Schedule II or not.
12. Before dealing with the charges levelled against the Noticees, the relevant legal provisions, the contravention of which have been alleged in the instant case are reproduced hereunder:-

Broker Regulations

“Conditions of registration.

9. *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-*

(a)

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

.....
(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

.....”

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

“A General

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

.....
(5) *Compliance with Statutory requirements: A Stock broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchanges from time to time as may be applicable to him.”*

B. Duty to the Investor

(1) Execution of Orders: A stock-broker, in his dealings with the clients and the general investing public, shall faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small Investor merely on the ground of the volume of business involved. A stock-broker shall promptly inform his client about the execution or non-execution of an order, and make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients.

13. I shall now proceed to deal with the charges alleged against Orion Capital and Orion Broking and their Partners/Directors. On an examination of the material available on record such as complaints of investors, information furnished by the Stock Exchanges, Depositories, information downloaded from MCA 21 portal, etc., I note the following:

- i. SEBI's inquiry with NSE as regards the news article about Orion Capital revealed the following:
 - a) NSE received complaints from the clients of Orion Capital that they were unable to transact in Futures & Options Segment(F&O); Branches of Orion Capital in Kerala, Pune and Erode were closed;
 - b) Globe Capital Markets Ltd.(“Globe Capital”), the Clearing Member of Orion Capital informed NSE that Orion Capital had reached the limit in F&O segment and it is yet to pay in funds, as a result only Immediate or Cancel orders (“IOC”) were permitted.

- c) NSE tried to contact Orion Capital and its Partners. However, none of them was reachable.
 - d) In view of the above, NSE disabled the trading terminal of Orion Capital on August 20, 2015;
 - e) NSE initiated a Limited Purpose Inspection (LPI) against Orion Capital, however, the same could not be carried out as none of the staff of Orion Capital was available at its Registered or at its Corporate Office address and both offices were locked.
 - f) Vide letter dated August 24, 2015 NSE sought clarification from Mr. Johnson as regards the complaints received by Exchange about non-acceptance of client orders, reaching limit in Equity Derivatives Segment, pay-in of funds and abrupt closure of business etc. However, the said letter got returned undelivered with remarks *“Consignee shifted from the given address”*.
 - g) In view of the above, NSE issued a Show Cause Notice (“SCN”) dated September 11, 2015 as to why disciplinary action including Suspension/Expulsion should not be initiated against Orion Capital. As the offices of Orion Capital were locked, the SCN was served through affixture.
 - h) As Orion Capital failed to respond to the SCN, NSE placed the matter before Disciplinary Action Committee (DAC) and based on the recommendations of the DAC, NSE vide Circular Download Ref. No.: NSE/COMP/31108 and Circular Ref. No.: 229/2015 dated November 09, 2015 expelled Orion Capital from the membership of NSE.
- ii. Similarly, BSE vide Notice no. 20151124-11 dated November 24, 2015 and MSEI vide Circular no.: MSEI/MEM/3580/2015 dated November 24, 2015, also expelled Orion Capital from their membership.
- iii. As regards Orion Broking, the following are noted from the information submitted by MCX:
- a) MCX received a scanned copy of letter dated August 22, 2015 from the Office of Inspector of Police, Cyber Crime Cell, Coimbatore informing that Orion Broking *“bankrupted and closed its offices without settling the dues of its clients”*.
 - b) MCX came across a newspaper article published on August 23, 2015, wherein it was mentioned that Orion Broking had defrauded many Investors.

- c) MCX received Complaints/Arbitration references from various investors alleging that Orion Broking had not settled their credit balance of clients, office was closed and thus not traceable, etc.
- d) In view of the above, MCX disabled trading terminal Orion Broking on August 24, 2015.
- e) MCX vide letter dated August 24, 2015 called upon Orion Broking for personal hearing, under rule 14.6 and rule 45 of the Exchange, before the DAC on August 27, 2015. However, Orion Broking failed to appear before the DAC and submit clarifications.
- f) MCX vide its letter dated August 24, 2015 intimated Globe Commodities Ltd. (Clearing Member of Orion Broking) about the pending complaints/arbitral references of the said Member and sought details of the deposits lying with them on account of the Member.
- g) MCX vide letter dated August 24, 2015 informed HDFC Bank Ltd about the receipt of large number of investor complaint(s) against Orion Broking. Further, in the interests of protection of clients' money, the Bank was advised to freeze the accounts of Orion Broking and its directors and to hold the same till the disposal of pending investor grievances.
- h) MCX issued public notices in daily newspapers (National and Regional) on August 26, 2015 and also on the website of MCX and invited the claims, if any, from the clients of Orion Broking.
- i) MCX conducted a field visit at the registered office of Orion Broking which confirmed the non-traceability of Orion Broking.
- j) MCX lodged a police complaint against Orion Broking with Commissioner of Police, Chennai and other local police authorities to investigate about the affairs of the Orion Broking.
- k) MCX issued a SCN to Orion Broking on August 31, 2015 asking as to why the Exchange should not take appropriate disciplinary action like expulsion, suspension, fine and/or warning and/or withdraw any right of Orion Broking.
- l) Orion Broking and its Directors failed to respond to SCN. They did not avail the opportunity of personal hearing granted to them on September 14, 2015 before the DAC.

- m) Considering the fact that Orion Broking violated Rules, Bye laws, Business Rules and Circulars issued by the MCX, DAC recommended expulsion of Orion Broking. In view of the same, MCX vide Circular no. MCX/ARB/267/2015 dated September 29, 2015 expelled Orion Broking and issued a public notice to this effect on October 02, 2015.
- iv. Subsequently, NCDEX also expelled its member Orion Broking with effect from March 31, 2016.
- v. ACE, vide email dated January 22, 2016 informed that Orion Broking had neither activated its trading on Exchange platform had it registered any client with Exchange.
- vi. As regards details of investor complaints against Orion Capital and Orion Broking, the following are noted from the information furnished by exchanges:
- NSE received 489 investor complaints as on November, 2015. Out of which 51 complaints were closed and 32 claims were settled. Remaining 406 complaints were placed before the Defaulter's Committee of NSE. As on January 22, 2016, 212 claim forms were received by the Defaulter Committee amounting to Rs.683.58 lacs.
 - NSE placed 4 investor complaints with respect to non-receipt/delay in receipt of funds/payments before the Arbitration panel, out of which 3 Arbitration Awards amounting to a claim of Rs.3,17,288/- were passed against Orion Capital. However, NSE submitted that there are no deposits of Orion Capital available after appropriation of Investor Service Cell/arbitration claims.
 - MCX vide email dated January 22, 2016 apprised SEBI that 746 complaints were received against Orion Broking, which have been converted into Combined Arbitration Proceedings ("CAP"). Out of the 746 arbitration references, awards were passed in respect of 738 references for an amount of Rs.4.17 Crore and in the remaining 8 instances, arbitration was under process.
 - NMCE and ACE vide emails dated January 20, 2016 and January 22, 2016, respectively, advised SEBI that they did not have any complaints pending against Orion Broking.

vii. From the reply submitted by Mr. Johnson on behalf of all the Noticees, the following are noted:

- The Noticees admitted that there was (i) huge delay in settlement of funds/securities due to the clients, (ii) pay-in entry adjustments to avoid exchange margin shortfall penalties, (iii) fraudulent activities in DP, (iv) delayed pay-outs to the clients etc.
- Mr. Johnson provided a rough estimate of cash and assets amounting to Rs.1,51,37,500/- and Rs.5,92,00,000/- respectively. It is however noted that CB-CID has seized their properties/attached their bank accounts.

14. In the light of the facts mentioned above, the following are clearly established:

- i. Orion Capital and Orion Broking closed their business without any prior intimation to their affiliated Exchanges or to their clients.
- ii. Orion Capital and Orion Broking have not responded to the Exchanges in response to any of the communications for redressal of investor grievances as well as the notices issued by Exchanges for disciplinary action. Hence, the Exchanges (NSE/BSE/MCX) have expelled Orion Capital and Orion Broking from their membership.
- iii. Several investor complaints have been received against Orion Capital and Orion Broking in the nature of non-settlement of the claims for funds and securities and balances due to their clients. The claim amount is more than Rs.6 Crore against Orion Capital and more than Rs.4 Crore against Orion Broking.
- iv. Orion Capital and Orion Broking have failed to redress the investor grievances till date.
- v. Arbitration Awards were passed against Orion Capital and Orion Broking and none of the Awards has been implemented by the Noticees.

15. Considering the abovementioned acts and admissions of Mr. Johnson, I find that Orion Capital and Orion Broking have failed to comply with the requirements and conditions of registration as specified under Regulation 9 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with clauses A(1), A (3), A(5) and B(1) of Schedule II.

16. Orion Capital and Orion Broking as Stock Broker/Commodity Broker at the relevant time were duty bound to follow the conditions laid down in the certificates of registration as Broker and also to abide by the code of conduct prescribed under the Brokers Regulations. During

the relevant period, the persons at the helm of affairs of Orion Capital were the Partners, Mr. Johnson Puthiarambil Jose, Mrs. Cinzy Johnson and Mr. Joseph Puthiarambil Chacko and hence, liable for the aforementioned violations. Similarly, Mr. Johnson Puthiarambil Jose and Mrs. Cinzy Johnson were the Promoter Directors of Orion Broking. By virtue of their directorship in the company, I find that they are liable for the violations committed by Orion Broking.

17. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon it under the securities laws. It is, therefore, necessary that SEBI exercises these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of any of the participants in the securities market, thereby fulfilling its legal mandate. A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to high standards of transparency, good governance and ethical behavior prescribed in securities laws and do not resort to fraudulent activities. In view of the gravity of the violations perpetrated by Orion Capital, Orion Broking and their partners as brought in the foregoing paragraphs I am of the opinion that they should not be allowed to have access to the securities market in view of the possible danger to the investors at large.
18. I note from the submissions of Mr. Johnson (dated July 04, 2017) that CB-CID has already initiated proceedings against Orion Capital and Orion Broking and seized their properties. In view of the same, I am of the view that SEBI should take up the claims of clients/investors of the Noticees with CB-CID.
19. In view of the foregoing, I, in exercise of powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act do hereby pass the following Directions :
 - Orion Capital and Debt Market (PAN: AACFO9456G), Orion Broking Services India Pvt. Ltd. (PAN: AABCO2694L), Mr. Johnson Puthiarambil Jose (PAN: AFZPJ2029Q), Mrs. Cinzy Johnson (PAN: AHNPC5874A) and Mr. Joseph Puthiarambil Chacko (PAN: AKUPJ0403G) are restrained and prohibited from

buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of ten **(10)** years from the date of this Order.

This shall not prohibit Orion Capital and Orion Broking from effecting the settlement of claims of its clients.

- Orion Capital and Orion Broking and its Partners/Directors are directed not to alienate any of their assets in any form till the full settlement of claims of its investors are effected.

20. This order shall come into force with immediate effect. The stock exchanges and the depositories are directed to ensure that the above directions are strictly enforced.

21. The above directions are without prejudice to the right of SEBI to take any other action that may be initiated against Orion Capital and Orion Broking and its Partners/Directors in accordance with law including the actions of imposing monetary penalties, suspension/cancellation of registration etc.

Place : Mumbai

S. RAMAN

Date : August 29, 2017

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA