

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In respect of Manish Harish Thakkar (PAN: ACTPT8377N), Proprietor- M/s KE Consulting Group and M/s Kumar Enterprises

1. SEBI had passed an interim order dated February 28, 2012 (hereinafter referred to as "**the interim order**") against KE Consulting Group (hereinafter referred to as "**KEC**") and Manish Harish Thakkar also known as Manish Palan (the Noticee) who is the proprietor of KEC and Kumar Enterprises, after having *prima facie* found that they were offering portfolio management and advisory services without obtaining certificate of registration thereby being in violation of Section 12(1) of the SEBI Act read with regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as "**PM Regulations**"). The interim order restrained KEC and its proprietor, Manish Thakkar from accessing the securities market, prohibited them from dealing in securities, directed them to cease and desist from undertaking portfolio management activities and directed them to resolve all pending complaints against them. They were also directed to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to the portfolio management activities.
2. The proceedings leading to the interim order were initiated after SEBI received a complaint from one Deepak Shantilal Shah. After conducting a preliminary examination based on available records and the website of KEC i.e. www.kegroup.in, a notice dated July 30, 2010 was issued to KEC asking it to show cause why appropriate directions should not be passed against it for violation of section 12(1) of SEBI Act and regulation 3 of the PM Regulations. While no reply was received, Manish Thakkar appeared for the personal hearing granted to him on February 15, 2012 and made his submissions. The interim order has recorded that Manish Thakkar had admitted to the activities carried out by KEC and also recorded that such activities were of the nature of portfolio management. While directing interim restraints on KEC and Manish Thakkar, the interim order also directed further investigation into the matter.

3. Pursuant to the investigation initiated in the matter, summons dated August 08, 2013 and October 07, 2013 were issued seeking information and records from Manish Thakkar. However the documents sought were not provided thereby hampering the investigation with respect to the extent and nature of services provided to the clients. Consequently, SEBI relied on available documents/webpages and complaints from various clients of KEC/Kumar Enterprises to arrive at a conclusion with respect to the violations of securities law committed by the Noticee.
4. Based on the conclusions arrived at in the Investigation Report with respect to the noticee, a notice dated March 10, 2016 (hereinafter referred to as "**the Show cause notice**" / "**SCN**") was issued to the Noticee, alleging that the noticee acted as a portfolio manager without registering as such in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3 of the PM Regulations. The SCN also alleged that the schemes offered by the Noticee to his clients were fraudulent, thereby being in violation of Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f) and (k) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") read with Section 12A(a), (b) and (c) of the SEBI Act, 1992. The SCN therefore called on the Noticee to show cause as to why action in terms of sections 11(1), 11(4) (b) and 11B of the SEBI Act, 1992 should not be initiated against him for the violations alleged to have been committed.
5. The SCN was delivered to the Noticee but no reply was received. A notice for personal hearing scheduled on September 01, 2016 was issued to the Noticee and attempted to be hand-delivered but the Noticee refused to accept the same. Later, a notice sent by post, issued for a hearing scheduled on September 27, 2017, returned undelivered. Consequently the notice, intimating the said date of hearing, was delivered by way of newspaper publication. However the Noticee neither availed of the opportunity of personal hearing, nor did he send any reply with respect to the hearing notice. I am satisfied that the Noticee was given sufficient opportunities to make his written and oral submissions on the merits of the matter. Since no submissions have been made, I proceed to dispose off the matter on the basis of available records and complaints.

6. Facts available on record are summarised in the following paragraphs.

Website of KE Consulting Group

7. Manish Thakkar during the course of hearing before Whole Time Member admitted that website www.kegroup.in belongs to KEC and that he started KEC at the time when he was in Muscat and the contents on the website were created while he was in Muscat. He further stated that the website was meant for his Muscat based clients though it could be accessed by public at large including clients in India. The Noticee confirmed that the address and telephone numbers mentioned on the website belongs to him.
8. A letter was written to the website designer of KEC viz. Digital Picassocom seeking the date of award of assignment to design the website along with documentary proof, names and contact address of persons who interacted in designing of the website. The website designer informed that, after the website was designed, the client neither turned up nor was any payment made to the website designer.
9. The website of KEC stated that the group was into *"portfolio management and advisory firm catering to the needs of Financial Institutions, Corporate and HNIs. KEC is serving as portfolio consultant to 3 FIIs in India, 4 foreign banks, and investment banks in the overseas markets and number of HNIs and Corporate. The services provided are Portfolio Management and Advisory, Consultancy for Banks and funds allocation & Financial Planning"*. According to the website KEC was providing a number of portfolio management schemes and also claimed to have portfolio advisory size of nearly 1200 Crore. Some of the schemes offered/listed therein were as follows:
- '
 - *Arbitrage (a risk free product)*
 - *Hedge portfolio (a risk averse product)*
 - *Growth portfolio (a niche classic)*
 - *Balanced portfolio (a smarter product) and*
 - *Synthetic hedge portfolio (our core expertise)* '

Appointment Letter and Confirmation letter

10. It is also noticed that KEC has taken letter of appointment from its clients on KEC's letter head, appointing KEC as their portfolio consultant and executor of trading account with Religare Securities Ltd. (stock broker). The terms referred in the letter are as under-

- "1. PMS consultant shall manage my/our portfolio as < as scheme availed by the client>
2. Portfolio consulting charges shall be as under-
 - a. Arbitrage Portfolio - 10% of realized profit
 - b. Hedge portfolio
 - i. (Option-1) 10% of entire portfolio realized profit, chargeable only if the portfolio % is higher than the nifty % performance.
 - ii. (Option-2) 25% of portfolio realized profits over and above % returns in nifty
 - c. Growth portfolio
 - i. (Option-1) 10% of the entire portfolio realized profits, chargeable only if the portfolio % is higher than the nifty % performance.
 - ii. (Option-2) 25% of portfolio realized profits over and above % returns in nifty
 - d. Synthetic hedge portfolio - 50% of portfolio realized profit over and above 18% annualized profit.
3. For fees chargeable under option-2, the minimum portfolio holding period shall be 6 months (in case the portfolio liquidated before 6 months, option 1 shall apply).
4. Fees shall be calculated, charged and payable at the end of every month.
5. In case of early withdrawal of portfolio, the realizable value of the portfolio on the date of withdrawal shall be considered as portfolio value for the purpose of calculation of portfolio profits and fees payable and the same shall be paid at the time of portfolio withdrawal"

11. The following documents were *inter alia* received by SEBI from complainants/investors:

- a) agreements entered into or letters sent by KEC confirming holding of shares of clients;
- b) letters confirming receipt of shares into his demat account;
- c) confirmation letters being sent on opening account with Religare Securities Ltd. by Kumar Enterprises; and
- d) Confirmation letters regarding balance due to clients.

Complaints/Information received from clients of Noticee

12. Complaints received from a total of 9 clients of the noticee had been received

at different points in time with respect to his activities. These are listed hereunder:

- (i) Deepak Shah- Copy of a legal notice dated May 13, 2010 issued on behalf of Deepak Shah against the Noticee was sent to SEBI stating that Deepak Shah had transferred shares of certain companies to the pool account of Religare Securities Ltd. on the instructions of Manish Thakkar. Further, the Noticee was authorized (on April 07, 2009) to be his portfolio advisor, consultant and executor for the trading account opened with Religare Securities Ltd. towards the "Synthetic Hedge Portfolio" scheme offered by KEC. The notice also stated that Deepak Shah was informed by KEC that he made profit of 12.11 lakh upto June 2009. Accordingly, KEC charged him ₹5.81 lakh towards professional fee. Thereafter loss amounting to ₹27 lakh was incurred allegedly due to negligence of the Noticee. Thereafter, the Noticee entered into a scheme of arrangement dated January 15, 2010 with Deepak Shah whereby he acknowledged the loss of ₹27 lakh and agreed to return funds equivalent to the amount of loss to the complainant in three tranches. However, the Noticee failed to repay the said amounts.
- (ii) Geeta Baderia: A complaint was received from Geeta Baderia on July 07, 2010. The complaint stated that she had opted for "Synthetic Hedge Portfolio" product offered by KEC in August 2009. She opened a trading account with Religare Securities Ltd., and transferred shares worth ₹16 lakh and also an amount of ₹2 lakh through cheque to KEC. The trading undertaken by the Noticee resulted in loss amounting to ₹14.70 lakh.
- (iii) Surendra Joshi: Surendra Joshi filed a complaint with SEBI on July 06, 2010 against Kumar Enterprises. He had given 9,346 shares (value of ₹42.91 lakh) of Ranbaxy Laboratories Ltd. to Kumar Enterprises towards the PMS scheme during April 2007. From the information submitted by the complainant, it is observed that one Jayesh Shah had sent an email to the complainant on behalf of Kumar Enterprises. However, there has been no further information about Jayesh Shah.
- (iv) Rajiv Vora: From the documents submitted by Rajiv Vora on October 09, 2013, it was found that he was a client of KEC since June 30, 2009 and subscribed to the "Synthetic Hedge Portfolio (option-1)" service from them.

Rajiv Vora had transferred 1,200 shares of Reliance Industries Ltd. and 16,752 shares of Reliance Petroleum Ltd. on July 4, 2009 to BOID IN301774-10000167 i.e. the pool account of Religare Securities Ltd. The value of shares transferred by him (as on July 24, 2009) was ₹45.43 lakh. The trading undertaken by the Noticee resulted into loss amounting to ₹45.23 lakh. After a series of requests for repayment, the Noticee issued three cheques of ₹15 lakh each starting from November 20, 2009 from Kumar Enterprises, which were however dishonoured.

- (v) Rohit C Shah: Rohit C Shah was a client of Kumar Enterprises having PMS account no: PMR034. He had transferred shares of various companies to the Noticee and is yet to receive shares of 10 companies from Kumar Enterprises as of May 3, 2012.
- (vi) Sandhya R. Shah: Sandhya R. Shah was a client of Kumar Enterprises. She had transferred shares of various companies to the Noticee during the year 2007 and is yet to receive shares of 52 companies from Kumar Enterprises as of May 3, 2012.
- (vii) Nisha Shah: Nisha Shah was a client of Kumar Enterprises. She had transferred shares of various companies to the Noticee and is yet to receive shares of 13 companies from Kumar Enterprises as of May 3, 2012.
- (viii) Harshada Sanghvi: Harshada Sanghvi was a client of KEC since March 12, 2009. He had availed service of "Balance Portfolio" from them and, had paid / transferred an amount of ₹25 lakh and ₹20 lakh on May 4, 2009 and May 12, 2009 respectively to her trading account. A letter dated March 12, 2009, confirming receipt of mandate for managing the portfolio of the client as portfolio consultant, clearly shows that KEC along with the Noticee indulged in PMS activities. The statement of account shows that she received an amount of ₹10.60 lakh from the said trading account on June 3, 2009 and ₹5,90,005 on June 29, 2009. Further, the Noticee had paid her ₹10 lakh during March 2010 in three tranches, towards the loss caused to her.
- (ix) Sarosh Soli Framroze: Sarosh Soli Framroze stated in his complaint that

one employee of KEC viz. Alok Soni, approached him and explained risk free benefits that would accrue on the shares which he was holding in December 2008. He appointed KEC as portfolio consultant on December 24, 2008 and transferred his shares to demat account with Religare Securities Ltd. He further stated that, the financial scheme was efficiently handled by Alok Soni of KEC till June 2009. Thereafter, the Noticee advised him to invest in "Synthetic Arbitrage", which could provide higher return on investment. It was suggested to him to sell these shares in the falling market and pick them up later at cheaper rates. Since the previous scheme suggested was good, he had invested in "Synthetic Arbitrage" scheme by sale of shares held by him to the tune of ₹89 lakh on June 24, 2009. Thereafter, the Noticee failed to pay principal amount and returns as stated. Loss of ₹37.68 lakh and ₹45.50 lakh was incurred in July and August of 2009 due to illegal and unauthorized market transactions carried out by the Noticee. This was also confirmed by the arbitration order dated June 15, 2013. The Noticee had admitted his negligence for such irregular transactions and to compensate for them, an agreement was entered into between Mr. Framroze and KEC. Four post dated cheques of ₹22.50 lakh each was given by the Noticee to compensate the loss which however were dishonoured.

13. In addition to the above complaints, SEBI had also received certain documents from three clients of the Noticee, namely Mala Parekh (who transferred shares worth ₹49.93 lakh), Maganlal Mayani (who paid ₹25 lakh in 2008) and Girish Mayani (who transferred shares worth ₹48.32 lakh). The contents of the documents substantiate the allegation that the noticee was engaged in portfolio management schemes.

14. Based on the aforesaid documents and complaints, the issues for determination are identified as follows:

- (i) Whether the Noticee was required to register as a portfolio manager and if so whether he is in violation of the SEBI (Portfolio Managers) Regulations, 1993?
- (ii) Whether the schemes offered by the Noticee are fraudulent and if so whether he is in violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?

15. Requirement to register as Portfolio Manager

In this context, the provisions alleged to have been violated by the Noticee are reproduced hereunder for ease in reference:

SEBI Act, 1992

"Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) 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:

..."

SEBI (Portfolio Managers) Regulations, 1993

"3. Registration as portfolio manager.— No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations:

..."

- 16.** A 'Portfolio Manager' as defined in Regulation 2(cb) of the SEBI (Portfolio Managers) Regulations, 1993 to mean any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client the management or administration of a portfolio of securities or the funds of the client. The present case is a very apparent instance of portfolio management. The letters of appointment issued by the clients in favour of KEC appoint KEC as their 'portfolio consultant' and executor of the trading account with Religare Securities Ltd. (stock broker) and the terms thereof elaborate on the different kinds of schemes that can be entered into on payment of fee to KEC. The confirmation letter sent by KEC to its clients also records the intent to function as a portfolio manager of the respective client by executing transactions in funds/securities on their behalf. An agreement entered into by the Noticee with one of his clients - Sarosh Framroze (*who has also filed a complaint with SEBI*) dated February 15, 2010 also records an admission by the Noticee of advising and placing trades on behalf of his client, for which fee was due to him. All of these instances along with the content of the complaints received and recorded above lead to a conclusion that the Noticee was engaged in portfolio management activity. The fact that such portfolio management activity was carried out by him through his sole proprietary concern - KE Consulting Group is also obvious from the communications/documents stated above. The noticee was a registered sub-broker till December 06, 2010. Some of the aforesaid portfolio management activity

took place when he was a registered sub-broker, but even during the period when he was registered as a sub-broker, he was not legally permitted to enter into transactions in funds and securities on behalf of clients nor advise them regarding the same. Such activities were done without a valid registration as required by regulation 3 under the SEBI (Portfolio Managers) Regulations, 1993 and therefore the noticee is clearly in violation of the same as well as of section 12(1) of the SEBI Act which inter alia prohibits portfolio management activity without registration under the SEBI Regulations.

17. Fraudulent Schemes

In the context of the allegation of the noticee having violated the PFUTP Regulations, the relevant provisions thereof are reproduced hereunder for ease in reference:

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

...

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

...

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;"

18. The documents cited earlier read along with the complaints received by clients of the Noticee make it evident that the Noticee had been making false representations regarding his legal authority to engage in portfolio management activity in securities. Elaborate schemes were structured and widely advertised

using, *inter alia*, the internet to disseminate his illegal business activity. As noted earlier, the statements on the website and the letter of appointment made tall assurances of returns as well as experience in catering to large number of investors including institutional investors. The complaints also point to a pattern of the noticee using these schemes to solicit money/securities for transactions and in many instances not repaying monies/securities due to the investors. The complaints also indicate that unauthorised securities market transactions had been carried out by the noticee. These actions are clearly fraudulent and specifically in violation of regulations 3, 4(1) and 4(2)(f) and (k) of the PFUTP Regulations.

DIRECTIONS

- 19.** The Noticee has not bothered to respond to any of the allegations raised in the SCN and has failed to respond to the summons issued to him under section 11C of the SEBI Act, thereby avoiding the process of law. I also note that despite having been directed to resolve investor grievances, the Noticee has failed to do so, for which Adjudication Proceedings under the SEBI Act had been initiated culminating in the AO order dated November 21, 2017 imposing monetary penalty on the Noticee. The number of complaints received and the available documents lead to a reasonable inference that the Noticee has been unscrupulous in his transactions with investors. The continued presence of such persons in the securities market certainly erodes market confidence. Failure to impose stringent directions on such persons will only embolden perpetrators of securities market frauds.
- 20.** In view of the above, I in exercise of the powers conferred on me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby direct, with immediate effect, that the Noticee i.e. Manish Harish Thakkar, also known as Manish Palan, shall not-
- (i) access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly for a period of 7 years;
 - (ii) associate himself with any listed company or company intending to raise money from the public, or any registered intermediary, in the capacity of a director, key management personnel or partner (in the case of a partnership firm), for a period of 7 years; and

(iii) mobilize funds from the public or offer any portfolio management services for a period of 7 years.

It is clarified that the direction in sub-para (i) of this paragraph shall not restrict the Noticee from selling securities owned by him for the purpose of settlement of dues in favour of his clients. However each instance of such sale shall be effected only after obtaining the permission of SEBI. As a consequence to the direction in sub-para (iii) of this paragraph, the Noticee shall immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to the portfolio management activities.

- 21.** A copy of this Order shall be forwarded to the recognised stock exchanges and registered depositories for necessary compliance with the above directions.

DATE: February 02, 2018

PLACE: Mumbai

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA