

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55049	Date: December 29, 2022
Circular Ref. No: 218/2022	

To All NSE Members,

Sub: SEBI Order in the matter of D S Capital Venture Pvt. Ltd.

SEBI vide its Order No. WTM/SM/IMD/IMD-II_DO7/22531/2022-23 dated December 29, 2022, has hereby restrained following entities from accessing the securities market and further prohibited from buying, selling, or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of five (5) years from the date of this order.

Sr. no.	Name of Entity	PAN
1.	D.S. Capital Venture Pvt. Ltd.	AADCH8426M
2.	Sanjay Dwivedi	AJEPD3015F
3.	Piyush Kumar Sharma	CAVPS0431C
4.	Deepali Sharma	CTGPS9075L
5.	Abhishek Tiwari	APQPT5692C

Further, in case of failure of DS Capital to comply with the aforesaid directions, DS Capital shall be restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for an additional period of 3 years.

The order comes into force with immediate effect.

The detailed order is available on SEBI website (<http://www.sebi.gov.in>).

National Stock Exchange of India

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page under “Home-Regulation-Members-Action against Members-Regulatory Actions”.

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Ankkrit Vijayvergia (Extension: 22481), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

ANNEXURE: SEBI Order in the matter of D S Capital Venture Pvt. Ltd.

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

Order

Under Sections 11(1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Name	PAN
1	D.S. Capital Venture Pvt. Ltd.	AADCH8426M
2	Sanjay Dwivedi	AJEPD3015F
3	Piyush Kumar Sharma	CAVPS0431C
4	Deepali Sharma	CTGPS9075L
5	Abhishek Tiwari	APQPT5692C

(The above entities are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees")

In the matter of D S Capital Venture Pvt. Ltd.

1. The present proceedings are arising out of investor complaints received by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") during the period from May 28, 2019 to January 26, 2020 against DS Capital Venture Pvt. Ltd. (hereinafter referred to as "**DS Capital**"). DS Capital is registered as an Investment Adviser (hereinafter referred to as "**IA**"), under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**"), vide registration no. INA000010511, with effect from May 10, 2018 and *Noticees No. 2 to 5* are the Directors of DS Capital.

2. Certain investor complaints received on SCORES were forwarded to DS Capital so as to be redressed by it. However, DS Capital did not redress the complaints forwarded to it, despite reminders being sent to DS Capital. Accordingly, an inspection

of DS Capital was approved by SEBI, so as to examine the compliance of various regulatory stipulations laid down for an IA under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”), IA Regulations, circulars/guidelines framed and issued for the compliance by Investment Advisors. However, DS Capital was not reachable at any of the addresses (3 in nos.) available with SEBI including at its registered and correspondence addresses. Therefore, the examination of the affairs of DS Capital was done *inter alia* on the basis of investors complaints, details available on website of DS Capital and details available with its bank account. Based on the said examination conducted by SEBI, certain violations of provisions of securities laws were found to have been allegedly committed by DS Capital. The findings, as observed during the examination, are briefly mentioned herein below:

- 2.1. DS Capital and its Directors have failed to redress the complaints forwarded through SCORES despite reminders were sent to it.
 - 2.2. DS Capital and its Directors have failed to reply to the inspection notice / pre-inspection questionnaire sent to it by speed post as well as by email.
 - 2.3. DS Capital and its Directors have not informed SEBI with regard to change of its registered address.
 - 2.4. DS Capital and its Directors have not obtained approval from SEBI for updation / change of Directors.
 - 2.5. Complaints have been received against D.S. Capital alleging false assurances, assured returns, advisory services related grievances, loss of funds, cheating etc.
3. Based on the afore stated facts as revealed during the examination, a common Show Cause Notice dated May 10, 2021 (hereinafter referred to as “**SCN**”) was issued to the *Noticees* alleging that DS Capital and its Directors have violated the following provisions of securities laws:

- 3.1. regulations 21, 25 and 28 of IA Regulations;

3.2. regulations 3 (d) and 4 (2)(s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”).

4. It is noted from records that the SCN sent to DS Capital and *Noticee No. 2* had returned undelivered which was subsequently uploaded on the SEBI website under the heading “Unserved Summons / Notices” and was also published in the newspapers circulated in Indore and Mumbai. However, service of the SCN on the remaining *Noticees No. 3 to 5* was completed.

5. Pursuant to the service of SCN, *Noticee No. 3* vide an undated letter (received by SEBI on June 12, 2021) *inter alia* submitted as follows:

5.1. He acknowledged that some investor complaints are pending to be redressed. The same is due to the fraudulent acts of *Noticees No. 2* and *5*. The compliance department of DS Capital was led by *Noticee No. 5* which has not responded to clients’ complaints in a proper manner.

5.2. DS Capital is completely managed and operated by *Noticees No. 2* and *5*.

5.3. Many cases of financial frauds have been registered against *Noticees No. 2, 4* and *5*.

5.4. His shareholding in DS Capital was less than 1% and his power and authority in DS Capital was limited. The decision making power was with *Noticee No. 2* and he was operating the business of DS Capital along with *Noticee No. 5*.

6. *Noticee No. 5* in his reply to the SCN vide his letter dated July 1, 2021 has *inter alia* submitted as follows:

6.1. He was appointed in DS Capital as an Additional Director to maintain the quorum for Board Meetings. He has neither received any salary from DS Capital nor he is a shareholder of DS Capital.

6.2. He has nothing to do either with the clients of DS Capital or with the employees of DS Capital. Therefore, he is not in apposition to answer the queries raised by SEBI.

6.3. The business of DS Capital was run by *Noticee No. 4*.

6.4. He is no longer associated with DS Capital in the capacity of an Additional Director from September 16, 2019 onwards.

7. Subsequently, in accordance with the principles of natural justice, the *Noticees* were granted an opportunity of personal hearing in the matter on March 9, 2022. On the day of the scheduled personal hearing, DS Capital, *Noticees No. 2* and *4* failed to appear for the personal hearing while the personal hearing *qua Noticees No. 3* and *5* was rescheduled due to administrative exigencies. In the meantime, on the request of *Noticee No. 5*, he was granted 21 days' time to make additional submissions, if any in the matter.

8. Vide emails dated June 2, 2022, *Noticees No. 3* and *5* were granted an opportunity of personal hearing on July 13, 2022. On the day of the scheduled hearing, *Noticee No. 5* was represented by Mr. Ram Awatar Dhoot (hereinafter referred to as "**AR**"). The AR reiterated the submissions of the *Noticee No. 5* already made in his reply to the SCN. He further made the following submissions:

8.1. Being an Additional Director, he does not have the primary responsibility to run D.S. Capital.

8.2. He was also the Compliance Officer of D.S. Capital.

8.3. He had extended a loan of INR 7 lakh to D.S. Capital.

In the course of hearing, certain queries were raised for which the *Noticee* was given time to make submissions.

Noticee No. 3 reiterated his submissions made in his response to the SCN. He further stated that Mr. Sanjay Diwedi (*Noticee No. 2*) is married to his sister, Ms. Deepali Sharma (*Noticee No. 4*) and both of them are absconding. He was only for name sake a Director

in D.S. Capital and was paid salary till 2019. He was also given additional time to make further submissions in the matter, if any.

9. The post hearing queries which were sent to *Noticee No. 3* vide an email dated July 14, 2022 are as follows:

- 9.1. What is the relationship among *Noticees No. 2 to 4*?
- 9.2. What was his role in DS Capital, his tenure of employment, amount and period of monthly salary drawn during his employment with DS Capital?
- 9.3. Details about how DS Capital used to carry out its business.
- 9.4. Details about the activities of *Noticee No. 2* before joining DSCPL and current job profile.
- 9.5. What is the current address of *Noticee No. 2*?
- 9.6. Is he aware of any police complaint or any kind of complaint filed against DS Capital and / or its Directors?

10. Similarly, after his personal hearing, *Noticee No. 5* was also vide an email dated July 14, 2022 asked to respond to the following queries:

- 10.1. What is the relationship between *Noticees No. 2 and 5*?
- 10.2. What was his role in DS Capital, his tenure of employment, amount and period of monthly salary drawn during his employment with DS Capital?
- 10.3. What was his duration of serving as a Director/Compliance Officer of DS Capital?
- 10.4. What was the purpose of giving INR 7 Lakh to DS Capital? Who had asked for the amount?
- 10.5. What is his educational qualification, work experience before joining DS Capital and his current job profile?
- 10.6. Details of his communication with complainants/clients/investors whose complaints were not resolved.
- 10.7. What is the current address of *Noticee No. 2*?

11. *Noticee No. 5* has submitted an affidavit vide dated July 19, 2022. From the perusal of the above affidavit, I find the *Noticee* has stated the following in response to the post hearing queries:

11.1. He was the Director of DS Capital for the period October 8, 2018 to September 16, 2019.

11.2. He had paid INR 5 lakh on the request of *Noticees No. 2* and *3* for the purpose of paying salary to the employees and for clients' settlement.

11.3. He was not paid monthly salary by DS Capital.

11.4. He had no experience before joining DS Capital. He has done B.A. LLB. (Hons.) and is currently a Director in Money Maker Research and Investment Pvt. Ltd.

11.5. Madhya Pradesh Economic Offence Wing, Bhopal Unit Indore is investigating *Noticees No. 2* to *4*.

11.6. There were four bank accounts of DS Capital. IDFC Bank and Axis Bank accounts were operated by *Noticee No. 2* while SBI Bank and ICICI Bank accounts were operated by *Noticee No. 3*.

11.7. There were 17 complaints pending against DS Capital.

11.8. *Noticee No. 3* was not a taxi driver as claimed at the time of personal hearing.

12. *Noticee No. 3* vide his email dated July 25, 2022 has submitted the following responses to the post hearing queries:

12.1. Ms. Deepali Sharma is his sister and Mr. Sanjay Dwivedi is her husband. He is not in touch with them since 2020 as they are absconding.

12.2. He is a NISM Series-X-A: Investment Advisor certificate holder. He was the Director of DS Capital for the period July 2017 to December 31, 2019 and he had drawn cumulatively INR 13 lakh from DS Capital during his employment with DS Capital.

- 12.3. DS Capital was carrying out advisory services.
- 12.4. Before joining DS Capital, he was driving a taxi. He had tried some small scale business (café and travel business) during COVID period but nothing worked out. Currently, he is unemployed.
- 12.5. As per his knowledge, there is a complaint / police complaint against Mr. Sanjay Dwivedi.

Consideration of Issues and Findings

13. I have carefully perused and considered the findings as recorded at the time of examination and have also considered the above noted submissions made by *Notices No. 3 and 5*. The charges levelled in the present matter lead me to an examination of a limited issue, i.e., whether DS Capital and its Directors have violated the provisions of IA Regulations and PFUTP Regulations while DS Capital was acting as an Investment Adviser?

14. Before I proceed to examine the aforementioned submissions of the *Notices No. 3 and 5* in light of the findings of SEBI's examination, I find it worthwhile to recapitulate that the SCN has charged the *Notices* with violation of the provisions of IA Regulations and PFUTP Regulations. In order to appreciate the import and significance of the said provisions, it would be appropriate to refer to the said provisions, having bearing on the allegations made against the *Notices*. Accordingly, the said provisions are being reproduced hereunder for convenience and ready reference:

IA Regulations

21. Redressal of Client Grievances.

(1) An investment adviser shall redress client grievances promptly.

(2) ...

25. Obligation of Investment Adviser on inspection.

(1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in

possession of relevant information pertaining to conduct and affairs of such investment adviser, including representative of investment adviser, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

28. Liability for action in case of default.

“An investment adviser who -

(a) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;

(b) fails to furnish any information relating to its activity as an investment adviser as required by the Board;

...

(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf,

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.”

PFUTP Regulations

3. No person shall directly or indirectly—

...

(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 (2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: —

...

(s) mis-selling of securities or services relating to securities market;

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

(i) knowingly making a false or misleading statement, or

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

(iv) not taking reasonable care to ensure suitability of the securities or service to the buyer;

15. It is noted that in terms of the regulations 21 (1) and (2) of the IA Regulations, an investment adviser registered with SEBI shall redress its clients' grievances promptly. It is noted from the data available on SCORES that as on December 9, 2020, 17 investors' complaints were pending against DS Capital for more than 6 months. The details related to the aforesaid 17 investors' complaints are as follows:

Table No. 1

Sr No	Complainant Name	Status	Date of Receipt	Date of Forwarding to DS Capital	Last communication received from DS Capital	Last Reminder Sent to IA
1	Rama Soujanya Marella	Pending	26/01/2020	29/01/2020	Not received	Not sent
2	Praveen Patil	Pending	16/12/2019	31/12/2019	Not received	06/02/2020
3	Deepak Kumar	Pending	09/12/2019	18/02/2020	Not received	27/08/2020
4	Atul Tamhane	Pending	30/11/2019	02/12/2019	Not received	06/02/2020
5	Praveen Patil	Pending	25/11/2019	31/12/2019	Not received	06/02/2020
6	Praveen Patil	Pending	25/11/2019	31/12/2019	Not received	06/02/2020

Sr No	Complainant Name	Status	Date of Receipt	Date of Forwarding to DS Capital	Last communication received from DS Capital	Last Reminder Sent to IA
7	Praveen Patil	Pending	25/11/2019	31/12/2019	Not received	06/02/2020
8	Atul Tamhane	Pending	22/11/2019	31/12/2019	Not received	06/02/2020
9	Hrushikesh Sahoo	Pending	04/11/2019	18/11/2019	Not received	06/02/2020
10	Ankit Parsotambhai Busa	Pending	10/10/2019	21/11/2019	Not received	06/02/2020
11	Rakesh Vemula	Pending	24/09/2019	27/09/2019	Not received	30/06/2020
12	Nitika Kapoor	Pending	07/09/2019	24/02/2020	Not received	Not sent
13	Rohit Kumar	Pending	29/07/2019	03/08/2019	Not received	24/02/2020
14	A Bhavarlal	Pending	25/06/2019	28/06/2019	Not received	24/02/2020
15	Ajit Singh	Pending	21/06/2019	28/06/2019	17/09/2019	06/02/2020
16	Maj Vivekanand Shukla	Pending	11/06/2019	12/06/2019	05/11/2019	06/02/2020
17	Ajit Singh	Pending	28/05/2019	08/07/2019	17/09/2019	06/02/2020

16. I note that SEBI registered intermediaries, to whom complaints are forwarded through SCORES, are under statutory obligation to take immediate efforts on receipt of a complaint, for its resolution, in a prompt manner. Further, in the instant matter while forwarding the complaints to DS Capital, the IA was informed that suitable regulatory actions may be initiated against the IA in the absence of redressal of complaints. It is noted from the aforesaid table that the 17 investors complaints forwarded to DS Capital on SCORES, are yet to be resolved. In this connection, I note that investor redressal grievance mechanism is an important tool in the hands of SEBI to discharge its duties and obligations imposed on it under SEBI Act. One of the most important objects of SEBI

is to protect the interest of investors and the same undoubtedly includes timely redressal of grievances of investors. If investors do not get their complaints redressed promptly, it leads to frustration and they may be discouraged to invest any more in the scrip of the company or even in other instrument of securities market. This may, therefore, adversely affect the growth of capital market. Hence the importance of complaints redressal, cannot be undermined and its sanctity has to be maintained by all the registered intermediaries. In the instant matter, as per available records, the default to redress investors' grievances in question has continued for a considerable period of time, well beyond the time period stipulated under the applicable regulations and circular. This is a blatant violation of law and I find that DS Capital by taking no effective steps towards redressal of grievances of its clients has violated regulation 21 (1) of IA Regulations.

17. It is also noted from the material made available on record that an inspection notice / pre- inspection questionnaire which was sent to DS Capital subsequent to the approval by the Competent Authority to conduct inspection of DS Capital, came back undelivered. Further, attempts were made to reach out to DS Capital on its registered address, correspondence address and one other address, available on SEBI's record. However, DS Capital was untraceable at any of the addresses mentioned above. It is viewed that inspite of SEBI's best efforts, SEBI could not carry out the physical inspection of books of accounts, records and documents maintained by DS Capital to ascertain as to whether its activities were in compliance with securities law and in the interest of investors. It is pertinent to note that SEBI is constituted to promote orderly and healthy growth of securities market apart from protecting investors' interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct inspection into the affairs of various registered intermediaries from time to time. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to ensure compliance by a registered intermediary with the provisions of the Act, Rules, regulations, by-laws and circulars issued from time to time which are meant to regulate the securities market and are applicable to the said intermediary. Here it will be relevant to quote the order of Hon'ble

Securities Appellate Tribunal in the matter of *ACML Capital Markets Ltd. vs. SEBI* decided on June 29, 2022 wherein it was held as follows:

*“... we find that the object of inspection of books of accounts and records of any Intermediary is to monitor and identify any non-compliance with respect to process procedures and systems prescribed through various provisions of the SEBI Act, Rules, Regulations and Circulars issued from time to time. The broker is required to take corrective steps in the event any irregularity as pointed out during the course of inspection. In this regard this Tribunal in the matter of **Religare Securities Limited v Securities and Exchange Board of India (Appeal No. 23 of 2011 decided on June 16, 2011)** held that the purpose of carrying out inspection was not punitive and that the object was to make the intermediary comply with the procedural requirements with regard to the maintenance of records etc...”*

18. For the purpose of carrying out an inspection, first and the foremost thing that is required is that the registered intermediaries should be available at the address provided by it at the time of making the application to be registered with SEBI as an intermediary in the securities market. However, in the instant matter, DS Capital by remaining incommunicado, has hindered SEBI's inspection by not furnishing such books of accounts and other documents lying in its custody which would have enabled SEBI to arrive at a finding with respect to the compliance of DS Capital with the various rules and regulations, applicable to the functioning of an IA. I also note that there is nothing on record to suggest any change in address of the intermediary from the last details furnished by it to SEBI. Under the circumstances, I find that DS Capital by not being present at any of the addresses where it was supposed to be present and consequently, by not furnishing the data and information sought from it by SEBI, has committed a serious breach which can have severe repercussions in the market. The aforesaid act exhibited by DS Capital where it is untraceable, cannot be taken lightly as it has prevented SEBI from performing its statutory duties enjoined upon it under SEBI Act and therefore, it is held that DS Capital has violated regulation 25 (1) of IA Regulations.

19. In continuation with the aforesaid finding, it is noted that DS Capital had furnished the following address as its registered address at the time registration viz:- Shop No. 28, Second Floor, Om Heera Panna Shopping Mall, Near Oshiwara Police Station, Andheri (W), Mumbai, Maharashtra, 400053. It is noticed that pre-inspection questionnaire, SCN and hearing notices sent to the said address, have come back undelivered. It is further noted from the MCA website that the registered office of DS Capital is at Plot No. 3141, Rahmat Nagar Behind Gangotri Hotel, Jamuna Talkies Road, Chitralalaya Bhaiyapada, Boisar, Palghar, Thane, Maharashtra, 401501. This change in the registered office of DS Capital has not been informed by DS Capital to SEBI. It is also noted from records that DS Capital is not available even at its communication address also. The aforesaid change in addresses, is a material information as all the legal / statutory notices and communication from investors / clients are sent at the office address and any investor can physically approach the company for addressal of any of his queries or to seek redressal of his grievances. Moreover, from a regulatory perspective, updating of address is also material as SEBI on a regular basis undertakes inspection of the books of accounts, records and documents of registered intermediaries which are available at the official premises of the intermediary, which in the given case for reasons as noted in preceding paragraphs, could not be undertaken. Therefore, it is held that DS Capital has not acted in compliance with the conditions of its certificate of registration and hence, has violated regulation 13 (b) of IA Regulations. The text of the said provision is reproduced below:

13. The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions: -

(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

20. Further, at the time of making the application for registration, it is noted from the application form dated July 5, 2017 that *Notices No. 3 and 4* were the Directors of

DS Capital as submitted by DS Capital at that point of time. However, as per MCA records, following are / were the Directors of DS Capital:

Table No. 2

DIN	Name	Designation	Date of Appointment	Date of resignation
07214042	Piyush Kumar Sharma	Director	25/1/2017	7/7/2020
07717353	Deepali Sharma		25/1/2017	10/10/2018
03635874	Sanjay Kumar Dwivedi		7/9/2016	20/11/2019
08251068	Abhishek Tiwari	Additional Director	8/10/2018	16/9/2019

21. It is noted from the above table that though Mr. Sanjay Kumar Dwivedi was a Director of DS Capital at the time of seeking registration from SEBI (application dated July 5, 2017), however, the application of DS Capital did not contain the said information and the application submitted to SEBI for registration by DS Capital contained false information with respect to composition of its Board. Furthermore, it is noted that the resignation of Ms. Deepali Sharma from DS Capital with effect from October 10, 2018 and appointment of Mr. Abhishek Tiwari with effect from October 8, 2018, has not been informed by DS Capital to SEBI. In this regard, it is noted that a company being a juristic person, all its deeds and functions are the result of acts of the individual natural persons who manage its affairs. In that context, the role of a Director is very significant and material in running day to day affairs of the company. A Director has been enjoined under the Companies Act, 2013 to act with due care, skill and diligence in managing the affairs of the company so as to ensure that the company's operations are within the confines of law. Accordingly, composition of Board of Directors of a company is a material information and consequently, any change in the constitution of Board of Directors of a company, is also a material information as the same goes to the root of efficient functioning and management of the company. In the instant matter, I note that DS Capital has failed to inform the change in the constitution of its Board of Directors and hence, it has failed to comply with the conditions of its certificate of registration. I, therefore find that DS Capital has violated regulation 13 (b) of IA Regulations.

22. It is noted from the SCN that for the failure to inform SEBI about the change in its registered office and change in its constitution of Board, DS Capital has been charged for violation of regulation 28 of IA Regulations. The said regulation invites action for failure to furnish any information relating to its activity as an IA, as required by the Board. Having considered the same, it has been noted in the preceding paragraphs that the aforesaid regulation does not get attracted in the facts of the matter and the applicable provision to be alleged for concealing and not furnishing the change in directorship is regulation 13 (b) of IA Regulations. Therefore, before proceedings ahead, it is appropriate at this juncture to rely on the findings of Hon'ble Bombay High Court in the matter of *SEBI vs. Sangeeta Jayesh Vaila* decided on December 5, 2003 wherein the Hon'ble High Court held as follows:

"It is well settled that if the power to act in the authority exists in a fact situation, such exercise of power is not vitiated by the reference to wrong provision of law. Mention of wrong provision of law shall not render the exercise of power by the authority bad in law if the source of power can be traced in some other provision."

In the instant matter, though DS Capital has been charged for violation of regulation 28 of IA Regulations which is not the appropriate and relevant provision of law as alleged to have been violated by DS Capital for the extant proceedings, however, there does exist regulation 13 (b) of IA Regulations which, as noted in preceding paragraphs is found to have been violated by DS Capital. The said regulation 13(b) of IA Regulations, requires that every IA shall forthwith inform the Board/ SEBI in writing, if any information or particular previously submitted, are found to be false or misleading in any material particular or if there is any material change in the information already submitted. It has been observed above that D S Capital was not traceable at any of the address as made available to SEBI as well as, it has not informed the change in directorship, which is certainly a material change. Thus, though the acts have been alleged as violation of regulation 28 (b) of IA Regulations, however, the violation committed by DS Capital under the extant proceedings, can be sourced in other provision under the IA Regulations which is regulation 13(b) of IA Regulations. In any

event, DS Capital was aware of the basis of violation and could have made its defence based on the facts narrated in the SCN, which it has chosen to not do. In my opinion, no prejudice has been caused to DS Capital in putting up an effective defence, by mere quoting of a wrong provision of law. Considering, DS Capital was aware of the case that it has to meet, quoting of wrong provision of law, will not invalidate the allegations levelled in the SCN against it.

23. It has also been alleged in the SCN on the basis of investors' complaints that DS Capital has violated provisions of PFUTP Regulations by providing false assurances, assured returns, loss of funds, cheating etc. I note from the material made available on record that the aforesaid investors' complaints are supported by call recordings submitted by the complainants. The relevant transcripts of the call recordings are reproduced below [NOT PART OF SCN]:

- *Call@DS Capital (00917770854943)_20190929203317.mp3 of Mr. Rama Marella:*

0:48- accha profit bana kar dungi

*01:05- profit kaise banega market se main aapko bataungi. **I promise bahut badiya return nikaal ke dungi.** Sir aapka ek paisa waste nahi jaane dungi. **Iska double toh aapko main promise kar rahi hu ki main aapko bana kar de dungi***

02:47- jis mein main aapko kaam karaana chah rahi hu usi mein aapko continue working main provide karaungi. Uske baad mujhe batana ke profit hua ya nahi hua hai

*03:00- **Isi investment ko main apko 2 lakh kar ke dungi***

04:46- main aapko de rahi hu na profit bana kar aap toh mere saath judo na...mat karo kisi se bhi kaam aap.. aap mujh se judo.....uske baad (amount not clearly audible) ko 50 kawrana 5 tarikh tak uske baad main aapse ek rupaya nahi mangugi proper working dungi....

05:55- profit bana kar dungi

*09:26- mat tension lo... **profit bana ke main dungi aapko..theek hai***

10:17- profit ke baad ki baat kar rahi hu.. profit hoga.. theek hai

10:57- aapko kal profit dungi then 50 karna hai....

11:06- profit toh obviously aayega na . **Profit ke liye main commitment aapko kar rahi hu. Aapko profit bankar aaeyga 15000 ka**

11:44- **main aapko itna return nikaal kar de dunga ke aap kabhi loss mein nahi rahoge**

- PiyushDsCapital-20190624120858 of Mr. Rakesh Vemulla

08:39 (Complainant)- The RBI repo rate tha tabhi kuch Friday ko.. kuch Thursday ko aaya tha expiry date. **Mr. Deepak had promised me that day itself 1 lakh rupees.**

Mr. Piyush- hmmm hmmm hmm

Complainant- **Usi din ka 1 lakh promise kiya tha** isliye main ne kisi aur se 1 lakh maang ke leke aaya for interest

.....Maine yeh bhi bataya ke Deepak se mujhse nahi ho payega. Deepak ne bola Sir bas 1 din ke liye lelo kal tak main 1 lakh ko nikal ke dega bola tha...So what happened Mr. Deepak next day morning he has given me a 20000 profit and he switched off the phone

...

Mr. Piyush- Sir toh aapko profit hua

Complainant- Profit hua but overall is the loss.....

It is further observed from the audio file entitled "Trade-20190606165659" that, the complainant has made similar allegations at 20:03 minutes that Mr. Deepak called him the night before repo rate revision asking him to deposit INR 1 lakh and promised a profit of INR 80,000 – INR 1,50,000. Other observations from the said audio clip are as under:

04:09 (Complainant)- **The executives who have called me have given 110% assurance for the profit**

Ms. Neha- Sir there was the assurance not the guarantee

24. From the above transcripts furnished by the complainants it is noted that not only the employees of DS Capital are promising good returns but are also promising a specific return on investment in terms of money that can be made on the client's

investment. Further, the complainants are being assured of substantial returns promising that the same will offset any future losses. DS Capital being an expert / qualified entity giving advice in securities, knowing well the dynamics of the securities market, is still promising profits, which is a misleading act and has been made with an intent to sell its advisory services. Securities market returns are volatile and unpredictable. Further, in a short time span, the probability of incurring losses is equal to the probability of making gains. In my view, being a registered IA despite knowing the dynamics of the securities market, still DS Capital was committing good returns and a certain amount of money which is not only an attempt on its part to induce the client to subscribe to its advisory service by promising definite profit but also tantamount to a misleading act since full disclosure is not being made by DS Capital to the client by confirming that the proposed investment of the client may also incur loss.

25. In view of the above, it is observed that the conduct of DS Capital of promising profits and specific return on investment in terms of money, is an active concealment of the material fact that every investment in the market is subject to market risk and any investment made by the client no matter how much and for how long the investment is made, can also run into losses and even become zero. Thus, by not disclosing this material aspect, DS Capital has acted in a deceitful manner and has misled its clients.

26. By promising profits and specific return on investment in terms of money, DS Capital has knowingly made a false and misleading statement to its clients as there exists neither any rationale for belief of such returns nor can the said promised profits be achieved with any certainty. Hence, it becomes clear that DS Capital was mis-selling its services which has led to the violation of provision of regulation 4(2) (s) of PFUTP Regulations. Moreover, as discussed in preceding paragraphs, the act of promising profits and specific return on investment in terms of money and not informing the clients' about the material aspect that their investment in the securities market/ by informing that investment in securities is subject to market risk to the extent that their capital can even erode, blatantly amounts to a deceitful act and a misrepresentation of the truth. The aforesaid manipulative acts of DS Capital were employed by it to defraud

its clients with respect to their dealing in securities by availing its advisory services. Hence, there is no doubt that the aforesaid acts of DS Capital have led to violation of provision of regulation 3 (d) of PFUTP Regulations.

27. In the light of the aforesaid findings, I must note here that an entity which is granted registration as an investment adviser, has to mandatorily comply with IA Regulations including the conditions of its certificate of registration. An IA can neither conceal a material fact nor can an IA fail to furnish the information as sought from the IA. An IA has to comply with all the provisions of IA Regulations which enables the IA to effectively discharge its functions. I note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he / she / it operates and it ill-behooves the intermediary to be managing its affairs outside the confines of securities laws. The intermediary should not abuse the certificate of registration granted to it, in any manner. In the instant matter, as noted in the preceding paragraphs not only DS Capital has failed to redress the investors grievances but is also found to be misleading its clients. Moreover, DS Capital is also untraceable. Such detrimental acts of DS Capital not only cast a shadow of doubt over the operations of the *Company* but also jeopardises the integrity of the market and the confidence of the investors to deal in the securities market. Furthermore, by submitting wrong information and its failure to update material information with the Regulator it leads to an inference that DS Capital was not transparent in its dealings with the Regulator. The IA Regulations have been drafted not only to protect the interest of investors but also to bring in transparency and accountability in the functioning of an IA. In the present matter, DS Capital has failed to live upto the standards and objectives of IA Regulations hence, appropriate directions need to be passed against it.

28. Before closing my deliberations, I must also evaluate the roles and liabilities of the other *Noticees*, viz., *Noticees No. 2 to 5*. I note that *Noticees No. 2 to 5* have been attributed to be liable for the deeds of DS Capital by virtue of their directorship (reference may be made to Table No. 2). Insofar as the functioning of an artificial person, i.e., a company is concerned, it is observed that all the acts which are executed in the

name of incorporated entity, are done by the natural persons who by their own minds and wisdom, are controlling the affairs and management of such artificial juristic person (company) in the capacity of its Directors. The company, being an artificial entity, cannot function on its own volition and will move only in such direction, as may be desired and dictated by the Directors who are controlling the overall functioning of the company. I note that the position of a 'Director' in a company comes along with various onerous responsibilities and compliances with law that are associated with such position, which have to be adhered to by such Director and in case of default, he / she has to face the consequences thereof. The Directors of a company are persons appointed to manage and direct the affairs of the company. They are expected to diligently perform their duties with honesty, fairness, skill and care in administering the affairs of the company. Such a duty requires the Directors to devote adequate time and attention to the affairs of the company so as to be able to take decisions that do not expose the company to unnecessary risks / actions by enforcement agencies. This implies a high degree of accountability and knowledge of the overall functioning of the company. Therefore, the Director cannot wriggle out from his / her liability arising out of any wrongdoing by the company.

29. I find it apt to refer to the judgment of Hon'ble Supreme Court of India in *N. Narayanan vs. Adjudicating Officer, SEBI* (2013) 12 SCC 152, where Hon'ble Court, while dealing with the role of a Director held as follows:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot

shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

30. In the instant matter, there is nothing on record to show that DS Capital had a designated Managing Director or any other officer who is designated as key managerial personnel viz., CEO, CFO etc. Further, none of the *Notices* have been designated as Independent Director or a Non-Executive Director. Thus, on a preponderance of probability basis, all the *Notices* who have been appointed to the Board of DS Capital as Directors, are in charge and responsible for managing the affairs / business of the DS Capital.

31. *Notice No. 2* was associated with DS Capital since its incorporation as Director. Further, *Notice No. 2* has failed to cooperate in the current proceedings by failing to appear or submit a reply. Considering, *Notice No. 2* was the Director of DS Capital since its inception coupled with the absence of any key managerial personnel in DS Capital other than *Notices* who are Directors, as per available records, including absence of any material to show that *Notice No. 2* was not in charge and responsible for the affairs of DS Capital, I am inclined to hold that *Notice No. 2* was at the helm of the day to day affairs of DS Capital during the commission of the violations as held above against DS Capital and is equally liable for those violative acts on part of the DS Capital along with the other *Notices*.

32. *Notice No. 3* (Mr. Piyush Kumar Sharma) has submitted that it was *Notice Nos. 2 and 5* who were managing the affairs of DS Capital and his power and authority in DS Capital was limited. I do not find any substance in the submissions made by *Notice No. 3*. It was *Notice No. 3* who was one of the applicant to make the application on behalf of DS Capital. From the application form of DS Capital, it is observed that *Notice No. 3* is adequately qualified to deal in the securities market as he is a commerce graduate (M. Com) and holds NISM certificates related to an IA (Levels 1 and 2). Further, as claimed by him, as on July 5, 2017 (date of application), he has 5 years of experience in capital market and has extensive knowledge in stocks and commodities market. Moreover, in his submissions made before me, he has admitted that as a Director of DS

Capital he has drawn INR 13 lakh as salary during his tenure of directorship with DS Capital. Thus, as a Director of DS Capital, he was duty bound to look into all the matters, external and internal related to the progress of DS Capital as a company. As per his own declaration at the time of making the application for registration before SEBI, he was actively participating in improving the effectiveness of the business operation of DS Capital. His previous work experience also shows that he was a financial planner and research analyst in advisory agencies at Indore. Thus, his educational qualifications, work experience and role in DS Capital, unequivocally show that he was involved in managing the day to day affairs of DS Capital. Moreover, to the query raised at the time of hearing with respect to the functioning of DS Capital, *Noticee No. 3* has replied in his post hearing submissions that it was carrying out advisory services. Thus, even after being given an opportunity to explain the functioning of DS Capital, *Noticee No. 3* has not been able to demonstrate with documentary evidence that he was not involved in the day to day operation of DS Capital. Since, *Noticee No. 3* was involved with the investment advisory activities of DS Capital since the very beginning and as noted above, he is well equipped to handle the activities of an IA, he cannot be allowed to take shelter, under the argument that other Directors of DS Capital were managing the affairs of DS Capital. Therefore, I have no hesitation to hold that *Noticee No. 3* was at the helm of the day to day affairs of DS Capital during the commission of the violations as held above against DS Capital and is equally liable for those violative acts on part of the DS Capital along with the other *Noticees*.

33. *Noticee No. 4* was associated with DS Capital since its incorporation as Director. *Noticee No. 4* at the time of making the application for registration before SEBI had stated that she was looking into all the day to day affairs of DS Capital and was actively handling the management of DS Capital. There is nothing on record to show otherwise. Thus, *Noticee No. 4* was at the helm of the day to day affairs of DS Capital during the commission of the violations as held above against DS Capital and is equally liable for those violative acts on part of the DS Capital along with the other *Noticees*

34. *Noticee No. 5* (Mr. Abhishek Tiwari) has contended that he was the Additional Director of DS Capital who was appointed to maintain the quorum for Board meetings and he has nothing to do with the clients or employees of DS Capital. In this context, it is relevant to note that the roles, functions and duties of an Additional Director, is no different from a Director. The only difference is in the procedure of the appointment of an Additional Director and a Director. Thus, *Noticee No. 5* being part of the Board of Directors of DS Capital and having been vested with all the powers of a Director, was expected to exercise his power on behalf of DS Capital with utmost care, skill and due diligence, which the *Noticee No. 5* has failed to do in the present matter. As per *Noticee No. 5*, he has attended meeting to maintain the quorum of the Board meetings and to sign the Board resolution, which shows that he was present at the time of decision making process. Meetings of Board of Directors are not rituals where decisions are taken at the behest of other Directors, especially in a 3-member Board where the decision is taken based on majority. *Noticee No. 5* who is a lawyer by educational qualification must be aware that he was duty bound to apply his independent judgment as expected of a prudent person in his shoes and not just attend a Board meeting as a lip service towards a statutory requirement. Thus, taking recourse to arguments like it was the other Directors who were controlling the affairs of DS Capital or he has nothing to do with the clients and employees of DS Capital, will not come to the aid of *Noticee No. 5* when he as per his own admission has abdicated all his responsibilities and duties which were enjoined upon him under Companies Act, 1956. Therefore, it is held that *Noticee No. 5* was also at the helm of the day to day affairs of DS Capital during the commission of the violations as held above against DS Capital and is equally liable for those violative acts on part of the DS Capital along with the other *Noticees*.

35. In view of the foregoing discussions on various non-compliances and failure of the *Noticees* to act, as mandated under various statutory as well as regulatory provisions as alleged in the SCN and my observations thereon holding the said allegations of non-compliance and failure as established on facts and circumstances of the case, in order to achieve the avowed object of SEBI Act and to protect the interest of investors, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4)

and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby pass the following directions:

35.1. *Noticees No. 1 to 5* are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of five (5) years from the date of this order.

35.2. *Noticees No. 2 to 5* are hereby restrained from holding post of Director, any managerial position or associating themselves in any capacity with any listed public company and any public company which intends to raise money from the public, or any securities market intermediary registered with SEBI for a period of five (5) years.

35.3. DS Capital is directed to resolve the complaints pending against it in the SCORES and otherwise, within the period of 30 days from the date of this order.

35.4. DS Capital shall within a period of 3 months from the date of this order, furnish a report to SEBI, duly certified by a Chartered Accountant, certifying that all the complaints against *Noticee No. 1* have been resolved.

35.5. In case of failure of DS Capital to comply with the aforesaid directions, DS Capital shall be restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for an additional period of 3 years.

36. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticees* shall remain frozen.

37. The above order is without prejudice to the rights of SEBI to initiate other actions in accordance with law.

38. The Order shall come into force with the immediate effect.

39. A copy of this order shall be forwarded to *Noticees*, all the recognized Stock Exchanges, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: DECEMBER 29, 2022

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA