National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/61861	Date: May 2, 2024
Circular Ref. No: 320/2024	

To All NSE Members,

Sub: **SEBI Order in respect of unregistered portfolio management services by Allied Financial Services Private Ltd.**

This is with reference to SEBI Order no. QJA/AA/IMD/IMD-SEC-1/30316/2024-25 dated April 30, 2024, wherein SEBI has debarred following entities from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of three (3) years from the date of this Order.

Sr. No.	Name of the Noticee	PAN
1	Shri Awanish Kumar Mishra	AGOPM7538H
2	Money Mishra Financial Services	AAZFM1357R
3	Money Mishra Securities Pvt. Ltd.	AAKCM1468M
4	Shri Jitendra Kumar Tiwari	ALBPT6629A

Further, SEBI has directed that, if any of the Noticee mentioned at Para 69 (a) of SEBI order has any open position in any exchange traded derivative contracts, as on the date of this order, he can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees are permitted to settle the pay in and pay out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

The order comes into force with immediate effect.

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

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

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

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in respect of unregistered portfolio management services by Allied Financial Services Private Ltd.

QJA/AA/IMD/IMD-SEC-1/30316/2024-25

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4), 11(B)(1), 11(4A) AND 11(B)(2) OF THE SEBI ACT, 1992 READ WITH REGULATION 3 OF THE SEBI (PORTFOLIO MANAGERS) REGULATIONS, 1993 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

Noticee No.	Name of Noticee	PAN
1.	Shri Awanish Kumar Mishra	AGOPM7538H
2.	Money Mishra Financial Services	AAZFM1357R
3.	Money Mishra Securities Pvt. Ltd.	AAKCM1468M
4.	Shri Jitendra Kumar Tiwari	ALBPT6629A
5.	Shri Lalit Agarwal	AFKPA9024P
6.	Shri Himanshu Arora	AUXPA3314Q

In the matter of Unregistered Portfolio Management Services

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI"), had conducted investigation into the dealings of securities by Allied Financial Services Private Limited (**AFSPL**), a SEBI registered Broker and Depository Participant. During the course of the investigation, it was observed that AFSPL and its associated persons / entities viz. Noticee 1 i.e Mr. Awanish Kumar Mishra (**AKM)**, Noticee 2 i.e. Money Mishra Financial Services (**MMFS**) and Noticee 3 i.e. Money Mishra Securities Private Limited (**MMPL**) (*collectively known as "**Allied Group***") had entered into agreements with certain entities viz Vinimay Developers Pvt.Ltd. (**VDPL**), Cointribe Technologies Pvt. Ltd. (**CTPL**) and Antordaya Commercial and Holdings Pvt. Ltd. (**ACHPL**) (*collectively known as "**Dalmia Group***"), *inter alia*, to manage the trading and demat account of the Damia Group entities.

2. Accordingly, SEBI had initiated an investigation to examine whether the agreements entered into between the Allied Group entities and the Dalmia Group entities were in the nature of portfolio management services and whether the Allied Group entities had acted as unregistered portfolio managers in violation of the provisions of the SEBI Act, 1992 and SEBI (Portfolio Managers) Regulations, 1993.

3. On examination, it was, *prima facie*, found that the AFSPL and the Noticees 1 to 3 i.e. AKM, MMFS and MMPL have acted as portfolio managers without obtaining a certificate of registration from SEBI thereby allegedly violating Section 12 (1) of the SEBI Act, 1992 read with Regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993. Further, AKM, Jitendra Kumar Tiwari (**JKT**) i.e Noticee 4, Lalit Agarwal (**Lalit)** i.e Noticee 5 and Himanshu Arora (**Himanshu)** i.e. Noticee 6, being the directors / partners /signatories to the said agreements were also, *prima facie,* found to have violated the provisions of Section 12 (1) of the SEBI Act, 1992 and SEBI (Portfolio Managers) Regulations, 1993.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Pursuant to the conclusion of the investigation, a common Show Cause Notice (*hereinafter referred to as* "***SCN***") dated July 3, 2023 was issued to Noticees 1 to 6 calling upon them to show cause as to why suitable directions under Sections 11(4) and 11B (1) of the SEBI Act, 1992 including direction of restraint from accessing the securities market in any manner should not be issued against the Noticees for the alleged violations.

   Further, it is noted that during the investigation, SEBI had sought certain information from Noticee 1 i.e AKM vide summons dated December 7, 2022, which was duly served on him. However, the Noticee 1 did not provide the information sought from him in violation of Section 11 C (2) & (3) of the SEBI Act, 1992 for which proceedings u/s 11B (2) read with Section 15A(a) of the SEBI Act, 1992 have been initiated. The SCN has also sought to impose directions for this violation.

5. The Noticees were also called upon to show cause as to why inquiry should not be held against it in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon them under Section 11(4A), 11B(2) read with Section 15HB of the SEBI Act, 1992 for the alleged violations. Noticee 1 i.e AKM was also show caused as to why suitable directions including restraint from accessing the securities market in any manner and penalty be not imposed upon him under Section 15A(a) of the SEBI Act, 1992 r/w section 11B(2) for non compliance of summons.

6. The following documents were enclosed as annexures to the SCN:

Table A

Annexures to SCN	
Annex. No.	**Particulars**
A	Reply of summons dated August 26, 2022 by AKM
B	Agreement with CTPL
C	Agreement with VDPL
D	Agreement with ACHPL
E	Response submitted by Dalmia Group entities viz. CTPL, VDPL and ACHPL vide email dated July 04, 2022
F	Statement recording of AKM dated May 31, 2022
G	Summon dated August 02, 2022 issued to AKM
H	Letter dated May 30, 2022 submitted by AKM
I	Trading details CTPL, VDPL and ACHPL
J	Bank account statement of CTPL, VDPL and ACHPL
K	Financial Ledger of CTPL and VDPL with AFSPL
L	Directors of AFSPL, MMPL
M	Summons dated December 07, 2022

7. In the meantime, the instant matter was reassigned to the undersigned towards end of November 2023, pursuant to an internal reallocation of cases.

8. The SCN has *inter alia* alleged the following which is summarized below:-

8.1 AFSPL, is a SEBI registered Stock broker and Depository participant wherein AKM was the Managing Director in AFSPL, Director in MMPL and Managing Partner in MMFS and oversees all the activities in these companies/entity.

8.2 MMFS was established in the year 2014. Its partners are AKM and JKT. Further, AKM vide letter dated August 26, 2022, has also informed that JKT and AKM are the directors of MMPL. AKM has further stated that MMFS, MMPL and Money Mishra Overseas Pvt Ltd. are group companies.

8.3 AFSPL, AKM, MMFS and MMPL had entered into separate agreements with Dalmia Group entities, namely, VDPL, CTP, and ACHPL. The agreements were signed by AKM, Lalit and JKT on behalf of Allied Group entities. The details of the agreements are given in table below:

Date of Agreement	**Entities entering into agreement for PMS services**		**Signatory on behalf of Allied group entities**
	Allied Group entities	**Dalmia Group entities**	
March 24, 2017	• AFSPL • MMFS • MMPL • AKM	CTPL	• AKM (Self, MMFS) • JKT (MMPL) • Lalit (AFSPL)
May 15, 2017	• AFSPL • MMFS • MMPL • AKM	ACHPL	• AKM (Self, MMPL) • JKT (MMFS) • Lalit (AFSPL)
March 30, 2018	• AFSPL • MMFS • MMPL • AKM	VDPL	• AKM (Self, MMFS) • *For MMPL, AFSPL signatory could not be identified**

**Emails and summons were sent to AKM for providing the name of signatory on behalf of MMPL and AFSPL. However, AKM failed to provide the information.*

8.4 AKM vide letter dated August 26, 2022 sent vide an email dated August 26, 2022 has, *inter-alia,* informed that in relation to investment in securities market, AFSPL, MMFS, MMPL and AKM had entered into an agreement with CTPL on March 24, 2017, VDPL on March 30, 2018 and ACHPL on May 15, 2017.

8.5 In their reply to the summons dated June 23, 2022, Dalmia Group have also confirmed that CTPL had entered into the said agreement on March 24, 2017, VDPL on March 30, 2018 and with ACHPL on May 15, 2017.

8.6 From the agreement dated March 24, 2017 between CTPL and the Allied Group, it is noted that AKM had signed the agreement for self and on behalf of MMFS. JKT had signed on behalf of MMPL and Lalit had signed on behalf of AFSPL. As per the agreement, CTPL had transferred a sum of Rs. 4,00,00,000/- prior to entering into the said agreement. Rs. 2,00,00,000/- were transferred on January 11, 2017 and Rs. 2,00,00,000/- were transferred on February 23, 2017.

8.7 VDPL had entered into an agreement with the Allied Group entities on March 30, 2018. AKM had signed the agreement for self and on behalf of MMFS. The signatory on behalf of AFSPL and MMPL could not be identified from the agreement. Hence, AKM was advised vide emails to identify the signatory for VDPL. Further, a summon dated December 07, 2022, was also issued to AKM to provide the details of signatory on behalf of MMPL and AFSPL. However, AKM did not provide the said information to SEBI. As per the agreement, VDPL had transferred a sum of Rs. 4,00,00,000/- prior to entering into the agreement on September 21, 2017.

8.8 ACHPL had entered into an agreement with the Allied group entities on May 15, 2017. AKM had signed the agreement for self and on behalf of MMPL. JKT had signed on behalf of MMFS and Lalit had signed for AFSPL. As per the agreement, ACHPL had agreed to transfer a sum of Rs. 20,00,00,000/-. From the information provided by ACHPL, sum of Rs. 20,00,00,000/- was transferred to AFSPL in several tranches.

8.9 The relevant and common clauses of the agreements are as under:

a) *AND WHEREAS investor had opened a demat and trading account with AFSL (Allied Financial Services Private Limited), based upon the assurance of AFSL that it shall provide the services to investor in relation to opening of demat and trading account and operation of the same.*

b) *AND WHEREAS Money Mishra (Money Mishra Securities Private Limited) and AKM hold about 70% and 30% equity shares respectively of AFSL.*

c) *AND WHEREAS MFS (Money Mishra Financial Services) has represented to the investor that it is in the business of wealth management services and assured the investor that AFSL has the capability of providing services as per the terms and conditions envisaged in this Agreement.*

d) *AND WHEREAS Money Mishra, AKM, MFS and AFSL have independently and jointly represented to and assured the investor that AFSL shall perform its obligations under this Agreement in compliance with all applicable laws.*

e) *AND WHEREAS the investor has furnished to AFSL the duly filled in application form to open a demat account with AFSL.*

f) *Subject to the provisions of this Agreement, the investor has already transferred a sum of Rs ……….. and in future may transfer certain sums of money over a period of time (hereinafter referred to as "Investment Amount") to MFS and/or AFSL, in one or more tranches, for the aforesaid purpose. The In-vestment Amount solely deployed by MFS for the purpose of investment into securities / trading into securities through AFSL. MMS (Money Mishra, AKM and MFS are collectively referred to as "MMS") guarantee the safety of the amount to be invested in securities. Investor has the right to recall Investment Amount by giving a notice of 5 days.*

g) *Based on the representations of AFSL, MFS, AKM and Money Mishra that AFSL shall provide its services to the investor in respect of the demat account and shall not deal with the account without the written instructions of the investor, the investor had opened a demat account with AFSL ("Demat Account").*

h) *In consideration of AFSL and MMS performing their obligations under this Agreement, the investor shall pay such charges to AFSL for the purpose of opening and maintaining Demat Account, for carrying out the instructions of the investor and for rendering such other services* as may be agreed to from time to time between AFSL and the Investor.

i) *Any transfer of securities to and from the accounts of the investor shall be made by AFSL only on the basis of a written order, instruction, direction or mandate duly authorized by the Investor and that AFSL shall maintain adequate audit trail of such authorization. The Investor may also give standing instructions with regard to the creating of securities in its Demat Account and AFSL shall act according to such instructions.*

j) *AFSL shall not deal with the Demat Account without the instructions of investor.*

k) *That AFSL and MMS guarantees to the Investor, the Investment Amount at maturity or at any time before.*

l) *That AFSL and MMS has agreed to manage the trading & demat account of the investor. MFS agrees to stop all trading in trading & demat a/c of* *the investor, if in case the total loss in that account at any given point of time, reaches upto 1% of the total / cumulative Investment Amount.*

m) *That AFSL and MMS has agreed that they shall transfer the money / income / funds generated, through trading activities, to the bank account designated by the investor at the request of the Investor, Irrespective to the fact whether the money / income / funds are generated in the account of AFSL or MMS.*

n) *That MMS has agreed that they may choose to collect the money / income / funds generated at the trading and demat account of the investor and shall transfer the same to the bank account designated by the investor, at the request of the investor.*

o) *Money Mishra, AKM and MFS jointly and severally undertake that they shall cause AFSL to fulfill its obligations in respect of the demat account of the investor held with AFSL and in the event of default or breach of AFSL, Money Mishra, AKM, MFS and AFSL shall be jointly and severally liable for the consequences of such default / breach.*

8.10 From the clauses of the agreements mentioned above, it is observed from above clause l) and m) that agreements were entered by Allied Group entities to manage the funds transferred by CTPL, VDPL and ACHPL to AFSPL / MMFS. As per the clause a), it is stated that the Investor (i.e. respective Dalmia Group entity) had opened a demat and trading account with AFSPL, based upon the assurance of AFSPL that it shall provide the services to investor in relation to opening of demat and trading account and operation of the same. Further, MMFS had represented to the Investor stating that MMFS is in the business of wealth management services and that AFSPL has the capability of providing services as per the terms and conditions envisaged in this Agreement. Further, as mentioned at clause f), the amount invested by the investor is to be solely deployed by MMFS for the purpose of investment into securities / trading into securities through AFSPL. MMFS has also guaranteed the safety of the amount to be invested in securities. Further, AFSPL and MMFS have also guaranteed to the Investor, the Investment Amount at maturity or at any time before. As per the agreements, AFSPL and MMFS have also agreed to manage the trading and demat account of the investor. MMFS has also agreed to stop all trading in trading and demat a/c of the investor, if in case the total loss in that account at any given point of time, reaches upto 1% of the total / cumulative Investment Amount.

8.11 The submissions made by Dalmia group entities vide email dated July 04, 2022, are similar to the submissions made vide email dated August 07, 2020.

Vide email dated August 07, 2020, received from email id finance@dalmiadelhi.com have *inter-alia* provided the following:

a) *It has been mentioned that CTPL, VDPL and ACHPL had entered into agreements with Allied group entities for trading. Details of opening of trading account with Allied group has also been provided and the same is given hereunder:*

Date of opening trading account with Allied	***CTPL***	***VDPL***	***ACHPL***
Demat Account	*28-12-2016*	*12-12-2016*	*29-05-2017*
Trading Account	*04-01-2017*	*25-01-2017*	*29-05-2017*

b) *AKM of AFSPL represented to the aforesaid investors stating that MMFS is an expert in wealth management and has the capability of providing services in options / futures trading and is backed by a good team to support.*

c) *CTPL entered into an agreement with AFSPL on Mar-24-2017. AFSPL started making returns on the investments made by CTPL by trading in the account of CTPL as per the agreement.*

d) *ACHPL and VDPL also entered into a similar agreement with AFSPL on May 15, 2017 and March 30, 2018, respectively.*

e) *GHTPL transferred sum of Rs. 6.49 crores to AFSPL to commence trading as and when they wanted. However, GHTPL did not sign any agreement with Allied group entities.*

f) *No instructions for trading were ever given by CTPL, ACHPL and VDPL. Pursuant to the agreements, signed by these 3 investors, AFSPL used to carry out trading in their respective accounts and used to send contract notes / statements to the concerned three investor entities.*

g) *As per the agreements while the Trading and Demat accounts were opened with AFSPL, MMFS was the wealth manager and would advise the trading strategy which would generate returns on the amount invested. It was also agreed that if the trading account would show losses of 1% the trading would be stopped immediately.*

h) *The investment amount would be paid upfront, and the trading strategy would be limited to the amount invested which was to be used for margin. The entities did not provide any securities as margin.*

i) *Pursuant to the agreements, all payouts were made out at the request of the investor from out of the balances in the ledger account.*

8.12 AKM, during the statement recording held on May 31, 2022, *inter-alia*, stated that the said agreements were entered for opening of demat account of VDPL, CTPL and ACHPL. The agreements were done to ensure that the VDPL, CTPL and ACHPL provide the fund component of the margin and returns generated by trading in the accounts of VDPL, CTPL and ACHPL are transferred to their respective bank accounts. Trading was exclusively done in the derivative segment. It has further been stated that instruction from VDPL, ACHPL and CTPL for carrying out trading in the demat account of these companies came from Puneet Dalmia, who is one of the promoters of these companies.

8.13 Accordingly, AKM, vide summon dated August 02, 2022 was specifically advised to provide the details of trades executed by the broker (AFSPL) for Dalmia group entities and the record of receiving instructions given to the broker (AFSPL) for each such transactions. It was also mentioned to AKM that the requirement to preserve the record of instructions for undertaking a transaction for a client is stipulated under the SEBI Circular No. SEBI/HO/MIRSD/MIRSD2 /CIR/2016/95 dated September 26, 2016. However, AKM failed to produce any documentary record of receiving instructions from Puneet Dalmia or any other person for the transactions undertaken by them in the accounts of Dalmia group entities.

8.14 Further, vide his letter dated May 30, 2022, AKM has submitted that as per the arrangement, AFSPL was given permission by all Dalmia group entities to enter into trades in F&O segment etc. as per the strategies deemed proper by AFSPL. The same has also been confirmed by Dalmia group entities in their reply dated July 04, 2022, wherein it was submitted that no specific authorization for any of the trade was ever given by the Dalmia group entities because pursuant to the agreement, AFSPL used to carry out trading on its own. Therefore, it is apparent that the specific decisions for trading done in the accounts of CTPL, VDPL and ACHPL were taken by Allied group entities. Therefore, it is alleged that the securities transactions in the accounts of CTPL, VDPL and ACHPL were managed/administered by Allied group entities on their behalf. Vide letter dated May 30, 2022 , AKM had, *inter-alia*, submitted the following:

a) *The purpose / objective for entering into the said agreements was to generate income for different promoter held Dalmia group companies, more specifically Cointribe, through use of securities and / or mutual fund units as collateral belonging to OCL / DCEL.*
b) *It was required by Dalmia Group Companies that AFSPL place trades in its own name and transfer the funds generated to different Dalmia Group Companies / promoter backed companies.*

c) *As per the arrangement AFSPL was given permission by all Dalmia Group entities to enter into trades in F&O segment etc. as per the strategies deemed proper by AFSPL.*

8.15 CTPL, VDPL and ACHPL, in response to SEBI summons dated June 23, 2022, vide email dated July 4, 2022 on their behalf, *inter-alia*, informed that AKM represented to the above investors that Allied Group entities are experts in wealth management and have the capability of providing services in options / futures trading and are backed by a good team to support. Also it was assured to the Dalmia Group entities that there would be only profits from investments. As per the agreements with regard to CTPL, VDPL and ACHPL, while the trading and demat accounts were opened with AFSPL, MMFS was the wealth manager and would advise the trading strategy which would generate returns on the amounts invested. It was also agreed that if the trading account would show losses of 1%, the trading would be stopped immediately. As per the terms of the agreements, the investment amounts would be paid upfront and the trading strategy would be solely based on the amount invested. It is also pertinent to mention that no specific authorization for trading were ever given by investors because pursuant to the agreements, AFSPL used to carry out trading on its own.

8.16 AKM did not provide documentary evidence, in line with the SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/2016/95 dated September 26, 2016, w.r.t. the details of instructions received from CTPL, VDPL and ACHPL for execution of the trades on their behalf. AKM in its written submission to SEBI stated that as per the arrangement AFSPL was given permission by all Dalmia Group entities to enter into trades in F&O segment etc. as per the strategies deemed proper by AFSPL. The same has also been stated by CTPL, VDPL and ACHPL.

8.17 In light of the aforesaid, it is alleged that AFSPL , MMFS, MMPL and AKM had entered into an agreement with CTPL, VDPL and ACHPL to undertake management of the portfolio of securities or funds and trading in securities on behalf of the latter. Hence, AFSPL, AKM, MMFS and MMPL were providing portfolio management services, as it is observed that as per the agreement, AFSPL along with MMFS, MMSL and AKM were to manage the funds of CTPL, VDPL and ACHPL. These entities had transferred funds to the Allied Group and trades were executed in the futures and options segment of the stock exchange.

8.18 Vide email dated July 04, 2022 received from finance@dalmiadelhi.com the Dalmia group entities have provided the details of amounts paid / received to/from the Allied Group entities. The said details are given hereunder:

Cointribe Technologies Private Limited			
Payment date	**Receipt / Payment**	**Amount**	**To/from**
11-Jan 17	Payment	1,00,00,000	AFSPL
11-Jan 17	Payment	1,00,00,000	AFSPL
23-Feb-17	Payment	1,00,00,000	AFSPL
23-Feb-17	Payment	1,00,00,000	AFSPL
3-Mar-17	Receipt	3,00,00,000	AFSPL
10-Mar-17	Receipt	3,00,00,000	AFSPL
17-Mar-17	Receipt	3,00,00,000	MMFS
23-Mar-17	Receipt	1,00,00,000	AFSPL
24-Mar-17*	Receipt	2,00,00,000	MMFS
31-Mar-17	Receipt	3,00,00,000	MMFS
10-Apr-17	Payment	5,75,00,000	AFSPL
19-Apr-17	Payment	6,00,00,000	AFSPL
25-Apr-17	Receipt	5,75,00,000	AFSPL
01-Jul-17	Receipt	2,00,00,000	MMFS
07-Jul-17	Receipt	3,00,00,000	AFSPL
28-Jul-17	Receipt	2,56,00,000	MMFS
29-Jul-17	Receipt	1,28,01,098	AFSPL
21-Sep-17	Receipt	14,10,00,000	AFSPL
21-Sep-17	Payment	15,00,00,000	AFSPL
04-Oct-17	Payment	25,00,000	
10-Apr-18	Receipt	20,25,00,000	AFSPL
11-Apr-18	Receipt	5,06,93,713	AFSPL

** Agreement entered with allied group entities on March 24, 2017*

Vinimay Developers Private Limited			
Payment date	**Receipt / Payment**	**Amount**	**To/from**
21-Sep-17	Paid	4,00,00,000	AFSPL
27-Sep 17	Received	2,40,00,000	AFSPL
17-Aug-18*	Received	2,00,00,000	AFSPL
31-Aug-18	Received	50,00,000	AFSPL

** Agreement entered with allied group entities on March 30, 2018*

Antordaya Commercial & Holdings Private Limited			
Payment date	**Receipt / Payment**	**Amount**	**To/from**
02-Jun-17*	Paid	2,50,00,000	AFSPL

05-Jun-17	Paid	2,50,00,000	AFSPL
06-Jun-17	Paid	1,50,00,000	AFSPL
08-Jun-17	Paid	3,50,00,000	AFSPL
27-Jun-17	Paid	6,75,00,000	AFSPL
05-Jul-17	Paid	3,25,00,000	AFSPL
21-Sep-17	Received	19,00,000	AFSPL
21-Sep-17	Received	18,81,00,000	AFSPL
27-Mar-18	Received	10,00,000	AFSPL
10-Apr-18	Received	19,00,00,000	AFSPL

** Agreement entered with allied group entities on May 15, 2017*

8.19 Entity-wise, total amount paid to AFSPL and the total amount received from the Allied Group is given hereunder:

Entity	Total amount paid to AFSPL	Total amount received from AFSPL/MFS
CTPL	Rs. 31,00,00,000	Rs. 69,00,94,811
VDPL	Rs. 4,00,00,000	Rs. 4,90,00,000
ACHPL	Rs. 20,00,00,000	Rs. 38,10,00,000

8.20 As noted above, the agreement between Allied Group and CTPL was executed on March 24, 2017. In the said agreement, it is mentioned that the CTPL had already transferred Rs. 4,00,00,000/- and in future may transfer certain sums of money over a period of time to MMFS and/or AFSL. From the ledger of CTPL (as available from April 01, 2017 till April 11, 2018), it is noted that as on April 01, 2017, CTPL had an opening balance of Rs.6.93 lakh. Pursuant to the execution of the agreements, funds were transferred by CTPL to AFSPL had already transferred Rs. 4,00,00,000/- and in future may transfer certain sums of money over a period of time to MMFS and/or AFSL. From the ledger of VDPL (as available from September 21, 2017 till January 16, 2019), it is noted that as on September 21, 2017, VDPL had nil opening balance. On September 21, 2017, Rs. 4,00,00,000/- were transferred to AFSPL by VDPL and the same were utilized for trading in the F&O segment. It is observed that although the agreement between VDPL and Allied group was entered on March 30, 2018, Allied group entities were trading in the F&O segment for VDPL since December 11, 2017. Further, the credit made by VDPL to AFSPL were majorly being used for trading in F&O segment. The payments were made to VDPL by AFSPL out of its credit balance available with AFSPL. Trading details of CTPL, VDPL and ACHPL were enclosed.

8.21 It is observed from the aforesaid tables that returns were provided by AFSPL to its clients CTPL, VDPL and ACHPL. The trading by Allied group on behalf of Dalmia Group entities was done majorly during the period when fund transactions were done between Allied Group and Dalmia Group. The aforesaid fund transactions are also reflecting in the bank account statements of CTPL (account no. xxxxxxxx3512 with ICICI Bank), VDPL (account no. xxxxxxxxxxx1868 with Axis bank) and ACHPL (account no. xxxxxxxxxxxx0060 with Punjab National Bank), respectively. The aforesaid transactions done by CTPL and VDPL with AFSPL are also reflected in the financial ledger of CTPL and VDPL.

8.22 Trade details were sought from BSE, NSE and MSEI for the trades executed by AFSPL for its clients CTPL, VDPL, and ACHPL and for the period January 01, 2017 till date i.e. August 02, 2022. As per the trade details provided by NSE via email dated September 02, 2022, it is observed that trades were executed by AFSPL for CTPL, VDPL and ACHPL in the F&O segment of NSE during the said period. Trades have also been executed in the account of ACHPL in the equity segment of NSE through its broker AFSPL during the said period. No trades were executed at BSE.

8.23 In accordance with the terms mentioned in the agreement that the trades shall be executed by AFSPL for its investors CTPL, VDPL and ACHPL, trades were executed in the F&O segment of NSE by AFSPL for its investors CTPL, VDPL and ACHPL. As mentioned above, trades were also executed in the equity segment of NSE by AFSPL on behalf of ACHPL. Further, from the financial ledger of CTPL and VDPL and bank statements of CTPL, VDPL and ACHPL, it is observed that there was flow of funds from/to AFSPL or MMFS to/from CTPL, VDPL and ACHPL and the same were being used as margin in the F&O segment. Thus, CTPL, VDPL and ACHPL had transferred funds to AFSPL to trade on NSE.

8.24 In light of the aforesaid, it is inferred that CTPL, VDPL and ACHPL had entered into agreement with AFSPL, AKM, MMFS and MMPL who are associated entities to manage their funds by trading in the F&O segment and providing returns on the same. Funds of CTPL, VDPL and ACHPL were managed by the Allied Group and the trades were executed in the F&O segment of NSE by Allied Group on behalf of CTPL, VDPL and ACHPL. Hence, it is alleged in the SCN that AFSPL, AKM, MMFS and MMPL were providing portfolio management services to CTPL, VDPL and ACHPL. It is also alleged that Allied group entities viz. AFSPL, AKM, MMFS and MMPL do not have a valid certificate of registration from SEBI to offer portfolio management services.

8.25 Vide SEBI order dated November 4, 2022, AFSPL has already been found to have carried on activities of a portfolio manager without any registration from SEBI. In light of the above, it is alleged that AKM, MMFS and MMPL also acted as portfolio manager and engaged in 'portfolio management services', which falls under the definition of portfolio manager as defined under Regulations 2(cb) of the SEBI (PM) Regulation, 1993, as they entered into an agreement with CTPL, VDPL and ACHPL and managed funds of CTPL, VDPL and ACHPL by trading in the F&O segment of NSE through AFSPL.

8.26 As per the Ministry of Corporate Affairs (MCA) website, the directors of AFSPL and MMPL during the investigation period (March 15, 2017 - June 27, 2019 are as following:

a. AFSPL:
AKM (19/07/2016 – till date)
JKT (15/07/2017 - 07/03/2019)
Lalit (resigned on 30/08/2017)
Sheeraj Khan (07/03/2019 - 31/08/2020)
Himanshu (15/12/2017-17/0/2019)

b. MMPL:
AKM
JKT (resigned on 07/03/2019)
Sheeraj Khan (07/03/2019 - 31/08/2020)

8.27 Relevant agreements mentioned at Para 8.3 were signed by AKM, JKT and Lalit as directors of AFSPL/MMPL.

8.28 AKM has informed during the recording of statement held before Investigation Authority (IA), that he and JKT are the partners in MMFS.

8.29 Details of agreement, fund transaction and trading dates w.r.t CTPL is as follows:-

Date of Agreement	**Allied Group entities**	**Directors / Partners**	**Signatory on behalf of Allied group entities**	**Period of fund transactions between Allied Group and CTPL**	**Trading dates (only in F&O NSE)**
March 24, 2017	AFSPL	AKM JKT Lalit Sheeraj Khan Himanshu	Lalit	11/01/2017 to 11/04/2018	13/01/2017 to 28/03/2018

Date of Agreement	Allied Group entities	Directors / Partners	Signatory on behalf of Allied group entities	Period of fund transactions between Allied Group and CTPL	Trading dates (only in F&O NSE)
	MMFS	AKM JKT	AKM	17/03/2017 to 28/07/2017	
	MMPL	AKM JKT Sheeraj Khan	JKT		
	AKM	-	AKM		

8.30 Details of agreement, fund transaction and trading dates w.r.t ACHPL is as follows:

Date of Agreement	Allied Group entities	Directors / Partners	Signatory on behalf of Allied group entities	Period of fund transactions between Allied Group and ACHPL	Trading dates (CM & F&O - NSE)
May 15, 2017	AFSPL	AKM JKT Lalit Sheeraj Khan Himanshu	Lalit	21/09/2017 to 31/08/2018	12/02/2018 to 26/12/2018
	MMFS	AKM JKT	JKT		
	MMPL	AKM JKT Sheeraj Khan	AKM		
	AKM	-	AKM		

8.31 Details of agreement, fund transaction and trading dates w.r.t VDPL is as follows:-

Date of Agreement	Allied Group entities	Directors / Partners	Signatory on behalf of Allied group entities	Period of fund transactions between Allied Group and VDPL	Trading dates (only in F&O NSE)
March 30, 2018	AFSPL	AKM JKT Lalit	Could not be identified	02/06/2017 to 10/04/2018	11/12/2017 To 27/06/2019

Date of Agreement	Allied Group entities	Directors / Partners	Signatory on behalf of Allied group entities	Period of fund transactions between Allied Group and VDPL	Trading dates (only in F&O NSE)
		Sheeraj Khan Himanshu			
	MMFS	AKM JKT	AKM	-	
	MMPL	AKM JKT Sheeraj Khan	Could not be identified	-	
	AKM	-	AKM	-	

8.32 In view of the above, following allegations were made in the SCN against AKM, MMFS, MMPL, JKT, Lalit and Himanshu:-

a) AKM entered into agreement with CTPL, VDPL and ACHPL to offer portfolio management services without obtaining certificate of Registration from SEBI. He was Director in MMPL and Managing Partner in MMFS during the investigation period. MMPL and MMFS entered into agreement with all the Dalmia Group entities to offer portfolio management services without obtaining certificate of registration from SEBI. He signed the agreement on behalf of MMPL entered with ACHPL, which enabled MMPL to provide portfolio management services to ACHPL without obtaining certificate of registration from SEBI. He also signed the agreement on behalf of MMFS entered with VDPL and CTPL which enabled MMFS to provide portfolio management services to VDPL and CTPL without obtaining certificate of registration from SEBI.

b) MMFS entered into agreement with CTPL, VDPL and AHCPL to offer portfolio management services without obtaining certificate of registration from SEBI.

c) MMPL entered into agreement with VDPL and CTPL to offer portfolio management services without obtaining certificate of registration from SEBI.

d) JKT was Director in MMPL and Partner in MMFS during the investigation period. MMPL and MMFS entered into agreement with all the Dalmia Group entities to offer portfolio management services without obtaining certificate of registration from SEBI. He signed the agreement on behalf of MMPL entered with CTPL, which enabled MMPL to provide portfolio management services to CTPL without obtaining certificate of registration from SEBI. He also signed the agreement on behalf of MMFS entered with ACHPL, which enabled MMFS to provide portfolio management services to ACHPL without obtaining certificate of registration from SEBI.

e) Lalit was Director in AFSPL during the Investigation period. AFSPL entered into agreement with all the Dalmia Group entities to offer portfolio management services without obtaining certificate of registration from SEBI. Therefore, as a director of AFSPL during the Investigation period, he is responsible for the default committed by AFSPL. He signed the agreement on behalf of AFSPL entered with CTPL and ACHPL, which enabled AFSPL to provide portfolio management services to CTPL and ACHPL, without obtaining certificate of registration from SEBI.

f) Himanshu was Director in AFSPL during the investigation period. AFSPL entered into agreement with all Dalmia Group entities to offer portfolio management services without obtaining certificate of registration from SEBI. Therefore, as a director of AFSPL during the investigation period, he is responsible for the default committed by AFSPL.

8.33 Further, it is noted that during the course of investigation, SEBI had sought information from AKM vide summons dated 07.12.2022. However, AKM failed to submit following information which was sought vide this summon i.e.:

a) List of all the signatories on behalf of Allied group entities in the agreements entered with Dalmia group entities.

b) Contact details of Jitendra Kumar Tiwari

The aforesaid summon was served on AKM through Speed Post and a copy of the summon was also hand delivered at the address of AFSPL. Further, a copy of the summon was also sent to AKM through email. However, AKM did not respond to summon issued to him by the SEBI. Thus, it was alleged that AKM failed to provide the information that was sought from it by SEBI vide abovementioned summon and thereby violated the provisions of Section 11C (2) & (3) of the SEBI Act.

8.34 In view of above allegations, the noticees were called upon to show cause as to why :

a) Noticees 1 to 6 - appropriate directions under sections 11(1), 11(4), and 11 B(1) of the SEBI Act, 1992 read with provisions of SEBI (Portfolio Managers) Regulations, 1993 and circulars issued and penalty be not imposed under Section 15HB read with Section 11(4A) and 11B (2) of the SEBI Act, 1992 for the alleged violations.

b) Additionally against Noticee 1 – suitable direction u/s 11B and penalty be not imposed under Section 15 A(a) read with Section 11B (2) of the SEBI Act, 1992 for non-compliance of summons issued by SEBI.

9. I note the following details regarding the delivery of the SCN dated 03.07.2023 on the noticees:-

Noticee No./Name	**Mode of Delivery**	**Date of Delivery**	**Date of reply, if any**
1. AKM	a) Affixture b) Newspaper Publication c Email	a) 04.08.2023 b) 20.02.2024 c) 05.03.2024	No reply received
2. MMFS	a) Hand Delivery b) Newspaper Publication c) Email	a) 26.08.2023 b) 20.02.2024 c) 05.03.2024*	No reply received
3. MMPL	a) Affixture b) Newspaper Publication	a) 05.08.2023 b) 20.02.2024 c) 05.03.2024*	No reply received
4. JKT	a) Hand Delivery b) Newspaper Publication	a) date not recorded b) 20.02.2024	No reply received
5. Lalit	Hand Delivery	28.08.2023	30.01.2024
6. Himanshu	Speed Post	07.07.2023	29.07.2023

*email sent to AKM on 05.03.2024 as he was director/partner with MMPL/MMFS

10. The Noticee 5 i.e., Lalit vide letter dated 06.09.2023 informed SEBI that he has authorized his advocate to make submissions on his behalf. The advocate vide letter dated 11.09.2023, sought for inspection of documents which was granted to Noticee 5 on 04.10.2023.

11. An opportunity for personal hearing was granted to all the noticees on 30.01.2024. The service of hearing notice was made vide affixture and hand delivery for Noticees 1 to 4. However, Noticees 1 to 4 neither responded to the SCN nor

appeared for the hearing on the scheduled date. Hence, to ensure that the SCN and hearing noticees are delivered to these noticees, in accordance with the principles of natural justice, a newspaper publication was also made in the Hindustan Times (dated 20.02.2024) and in the Amar Ujala, Dehradun Hindi edition dated 20.02.2024 informing the noticees that another opportunity of personal hearing is scheduled on 05.03.2024. The details of the delivery of the hearing notice to the noticees is as follows

Noticee No./ Name	**Mode of Delivery**	**Date of Delivery**	**Date of further submissions post hearing**
1. AKM	a) Affixture b) Newspaper publication	a) Not permitted b) 20.02.2024	Nil
2. MMFS	a) Hand delivery b) Newspaper publication	a) 25.01.2024 b) 20.02.2024	Nil
3. MMPL	a) Affixture b) Newspaper publication	a) 25.01.2024 b) 20.02.2024	Nil
4. JKT	a) Affixture b) Newspaper publication	a) 28.01.2024 b) 20.02.2024	Nil
5. Lalit	Email	08.01.2024	07.02.2024
6. Himanshu	Email	08.01.2024	05.02.2024

12. Noticee 1 i.e AKM, vide email dated 04.03.2024, w.r.t the hearing scheduled on 05.03.2024 stated "*This is in reference to your email dated 04.03.2024 wherein you have informed us with the date of hearing scheduled for 05.03.2024. We would like to state that although we have received a copy of Show Cause Notice (SCN) dated July 03, 2023, but the SCN was without Annexures. Kindly send following Annexures at the earliest and reschedule the hearing by giving a least 10 days time from the date of sending Annexures. Please send Annexures through e-mail".* As requested, the annexures to the SCN were emailed to AKM on 05.03.2024 and the next hearing date was scheduled for Noticees 1 to 4 on 14.03.2024. However,

neither AKM nor the other noticees appeared for the hearing either in person nor online (*athough the Webex Link* was also sent).

13. In this regard, I find it relevant to refer to the order of Hon'ble SAT in the matter of *Dave Harihar Kiritbhai v. SEBI* (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it was observed, "…*further, it is being increasingly observed by the Tribunal that many persons / entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal*…"

14. I note that despite proper service of SCN and hearing notice, the Noticees 2 to 4 have not responded and Noticee 1 has responded, but he has not filed any reply. It is noted that the Noticees 1 to 4 have not been able to advance any justification or evidence or any submission refuting the allegations / charges levelled against them in the SCN. Moreover, they have chosen to remain absent inspite of several opportunities of personal hearing being offered to them viz on 30.01.2024, 05.03.2024 and 14.03.2024. Under the circumstances, absence of any reply or response to the allegations made in the SCN, leaves no other impression except that the Noticees have nothing to offer in their defense against the charges levelled in the SCN and have by their deliberate silence, admitted to their role w.r.t unregistered portfolio management services. Further, in this context, I find it apt to also refer to and rely on the observation of the Hon'ble Securities Appellate Tribunal ("SAT") in the case of *Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013-Order dated February 11, 2014),* wherein the Hon'ble SAT has observed "......*appellants have neither filed reply to show cause notices issued to them nor have availed opportunity of personal hearing offered to them*

in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices...".

15. Hence, even though Noticees 2 to 4 have remained ex-parte (Noticee 1 has responded but not provided his reply), I observe that the principles of natural justice have been adequately complied with in the present matter, and as the Noticees have chosen not to participate in the present proceedings before me, I am constrained to deal with the SCN on merits, based on the material available on record.

16. **Submissions of Noticee 5 (i.e Lalit)** - He has replied to the SCN vide letter dated 30.01.2024 and made submissions pursuant to the personal hearing vide letter dated 07.02.2024. The reply of Noticee 5 is summarized herein below: -

    16.1 AFSPL, MMFS, MMPL and AKM entered into the said agreements on behalf of the Allied Group. It has been alleged that at the time of entering into the agreements, Noticee 5 was the director and a signatory to two of the above agreements i.e CTPL and ACHPL. Thus, by virtue of being a director of AFSPL and a signatory to the two agreements (on behalf of AFSPL) it is alleged that the noticee has violated the provisions of SEBI Act and SEBI (PM) Regulations.

    16.2 The SCN has been issued in 2023, whereas the agreements in question were executed in 2017. It is submitted that an unreasonable and inordinate delay of over 6 years exists in initiating proceedings against the noticee.

    16.3 As Noticee resigned on 30.08.2017 from the position of director from AFSPL he is not associated with it and hence he has no access to essential records and documents necessary to refute the allegations outlined against him in SCN.

    16.4 The documents seized by SEBI in the search and seizure conducted on 19.08.2019 and 20.08.2019 and also the copy of the forensic audit report conducted by SEBI and NSE were not provided during the inspection undertaken on 04.10.2023.

16.5 He was appointed as a director of AFSPL on 07.06.2002 and ceased to be a director on 30.08.2017. He was a non-executive director and not part of the day to day management of AFSPL. Hence he had no control over the decisions made by AFSPL. Noticee has referred to the confirmatory order dated 24.01.2020 passed against *Mrs. Seema Khandelwal & Ors in the matter of Raghukul Shares India Private Ltd.* wherein WTM, SEBI disposed the SCN issues to certain entities as they were non-executive directors / independent directors not involved in the day to day functions of the company.

16.6 Section 149(2) of the Companies Act, 2013 states that a non-executive director shall be liable only in respect of such omission or commission by a company which had occurred with his knowledge, and with his consent, connivance or where he has not acted diligently. Noticee had no knowledge of the inner workings and decisions being taken. Further, in 2016 which is prior to entering into agreements, it was decided that noticee will no longer be part of the day to day management of AFSPL.

16.7 The SCN fails to attribute any role to noticee other than being a director and signatory to two of the said agreements. The agreements were entirely lawful and were not contrary to any law in force as far as AFSPL is concerned.

16.8 Noticee has made reference to various orders of Hon'ble Supreme Court and Hon'ble Securities Appellate Tribunal (SAT), viz *Sayanti Sen vs SEBI* case, *SEBI vs Gaurav Varshney* (2016 (14) SCC 430) and the *S.M.S Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr* (3005 5 SCC 89). Vide these orders it has been held that liability depends on the role one plays in the affairs of the company and not on any designation or status.

16.9 Additionally, on 09.07.2016 a share purchase agreement (SPA) was entered into between AFSPL and MMPL. After execution of the SPA, AKM had the sole control over the affairs of AFSPL and was in charge of the day to day affairs of AFSPL. The same can be substantiated vide the Undertaking-cum-Affidavit executed on 12.01.2019.

16.10 The Undertaking-cum-affidavit affirmed that the erstwhile management of AFSPL (including noticee) (Erstwhile Management) were no longer associated with the management and day to day affairs of AFSPL and responsible for the conduct of the business, have not attended any board meetings from F.Y.2017-18 onwards, have resigned from directorship, however, the requisite forms were not filed with ROC due to pendency approval / permission from the office of SEBI and were not responsible for any fraudulent transfer of shares in DPM system, fraudulent punching of any order in NSE, or misrepresentation / solicitation to any client / person, which may attract criminal breach of trust / liability.

16.11 Further to this, the Undertaking-cum-Affidavit was executed by AKM which clearly states that after the execution of SPA he was in complete control of the Allied Group and Money Mishra Group.

16.12 The role of AFSPL was limited to providing broking services to the Dalmia Group entities. Further, the clauses of the agreement clearly stipulate that the trades would be carried out in the manner prescribed by the respective client. None of the activities of services provided by AFSPL as per the agreement fall within the purview of portfolio management.

16.13 From the agreements, Money Mishra Group were the wealth advisors in all the agreements and who were making the trading decisions on behalf of the Dalmia Group.

16.14 The noticee was not a director in the Money Mishra Group and therefore any allegation against Money Mishra Group do not pertain to him.

16.15 With reference to the agreement between Allied Group and ACHPL , the period of fund transactions is from 21.09.2017 to 31.08.2018. It is submitted that he had resigned from the company on 30.08.2017 prior to the funds even being transferred to AFSPL. Thus during the entire subsistence of transactions, he was not a director with AFSPL. Thus any allegation held against the noticee to this agreement in particular ought to be dismissed entirely.

16.16 In the SEBI's Ex-Parte Order dated 27.02.2019, the noticee was wrongly arraigned in the proceedings and all the allegations stated in the Order pertained to a period after his resignation and after the entire management and control of the company was shifted.

16.17 SEBI vide Confirmatory Order dated 17.5.2019 held that due to his resignation and no objection /allegation / adverse remarks against him and other individuals the continuation of the directions in the ex-parte order was not warranted.

16.18 In the order dated 04.11.2022 in the matter of AFSPL, the name of the noticee has not appeared. The SEBI Confirmatory Order categorically records that AKM was the managing director in AFSPL, director in MMPL and oversaw all the operations of the Allied Group and Money Mishra Group.

16.19 It is imperative to note that while the directors / erstwhile directors are arraigned as noticees to the SCN, SEBI has not arraigned AFSPL as a noticee to the SCN. It is submitted that joint and several liability of a company and director cannot arise, if the company itself has not been made a party to the proceedings. Thus SEBI ought not to hold him liable for the alleged violations, while SEBI has not named the company as an noticee for the alleged violations.

17. The **Noticee 5 (i.e Lalit)** reiterated the submissions during the personal hearing held on 30.01.2024. Post personal hearing**,** the noticee vide submissions dated 07.02.2024 further, stated the following which is summarized herein below:-

17.1 The noticee clarified that while the submissions were made that the agreements were indeed signed by the present noticee, the submissions contained several caveats and background facts which resulted in the noticee signing the agreements. However, the minutes of the proceedings taints the submission as an admission of guilt by the noticee. Despite informing SEBI about this, the revised record of proceeding has not been circulated.

17.2 The agreements entered into by AFSPL did not mention provision of portfolio management services by it and hence not in violation of the portfolio managers regulations w.r.t role of AFSPL, the noticee lacked knowledge of the transactions being carried out by AFSPL given his complete non involvement in the day to day affairs of AFSPL. Additionally SCN does not contain any allegation against the noticee regarding his involvement in the affairs of the AFSPL, which was completed controlled and managed by AKM.

17.3 AFSPL has not been arraigned as a noticee to the captioned SCN and the directors have been named as noticees for the action of the company without the company being made a noticee. Based on the above, it was submitted that joint and several liability of a company and director cannot arise if the company itself is not made a party to the proceedings. It was orally informed during the hearing that vide an order dated 04.11.2022, action had already been taken against AFSPL for the present matter. However, the order dated 04.11.2022 is passed in furtherance of a SCN dated 29.10.2021 for various violations by AFSPL including non-availability of client funds and securities, non settlement of client funds and securities, non maintenance of sufficient net worth, dealing with unregistered entities, etc. While the order also alleges violation of the Portfolio Managers Regulations, the same is for a distinct and separate finding, whereas the present proceedings form a fresh cause of action and therefore necessitates that the company ie AFSPL also be named as noticee to the present SCN to justify any action against the noticee who was director of AFSPL. Para 40 of the Order dated 04.11.2022 crystallizes the issue as to why Portfolio Managers Regulations were violated in that matter by AFSPL which has no bearing to the matter at hand. Rightly so, the present noticee was not named in the order dated 04.11.2022 despite being a director of AFSPL during the period stipulated in the order. The SCN referred to in the order also does not mention any of the allegations contained in the present SCN.

17.4 The Investigation Report categorically observed that the proceedings are required to be initiated against AFSPL based on the findings of the investigation in the present matter.

17.5 SEBI has not taken action against AFSPL for violations mentioned in the investigations, despite recommendation in the investigation report. Although it was incorrectly contended by SEBI during the personal hearing, there is no order which is available in the public domain where SEBI has passed an order against AFSPL, for violation of Portfolio Managers Regulation, for the violations pertaining to the present matter involving the execution of agreements as mentioned in the SCN.

17.6 It is submitted that the investigation report is undated, it is evident that the same has been finalized and executed only after 07.12.2022 i.e after the summons issued on 07.12.2022 (annexure 13 to SCN), considering that this is the last document / record that is mentioned in the investigation report. Thus it is submitted that there is no subsequent order that is publicly available or relied upon by SEBI wherein any action has been initiated against AFSPL. In view of the same, as no action has been taken against AFSPL subsequent to the order dated 04.11.2022, the present SCN ought to be disposed off qua the noticee without any adverse observations or penalty. The action taken against AFSPL under the order dated 04.11.2022 is not only incorrect but also a misrepresentation to dismiss the submissions of the noticee. This did not form part of the proceedings of hearing. Noticee requested the SEBI to provide noticee with a copy of the order where action has been taken AFSPL for execution of agreements which form a subject matter of the present SCN.

17.7 The agreements entered between the parties expressly showcases that the services advanced by AFSPL were limited to providing stock broking services. In all the agreements, Money Mishra Group seem to have represented themselves as wealth advisors and undertaken to take trading decisions for the clients. The Noticee is not involved in any manner with the Money Mishra Group and has not been a director or signatory to any of the agreements on behalf of Money Mishra Group. Since the agreements do not stipulate the provisions of the portfolio management services by AFSPL, the Noticee cannot be held liable for the actions of the Money Mishra Group.

17.8 The noticee has not benefitted by signing the agreements and there is no allegation / observation of any monetary or other benefits made by the noticee by virtue of the agreements or the resultant transactions between the entities.

17.9 Noticee reiterated that in reference to the agreement entered between Allied Group and ACHPL, the period of trades mentioned in the SCN is from 21.09.2017 to 31.08.2018. The noticee resigned from AFSPL on 30.08.2017 which is prior to any trades taking place. The alleged portfolio management services commenced after the noticee's resignation, which clearly establishes the lack of involvement or even knowledge in any of the alleged portfolio management services under this agreement.

17.10 With respect to the query raised during the hearing as to why a tripartite agreement had been executed instead of separate agreements, noticee submitted that noticee was a non-executive director, who had never drawn any salary and did not have any control or decision making authority in AFSPL. Secondly the agreements executed clearly show that they were mainly between the respective clients and the Money Mishra group, where AFSPL was only made a party as it was the stock broker who was to facilitate the agreement / understanding between Money Mishra Group and the clients. Further, since the controlling person i.e AKM was a director in AFSPL and the Money Mishra Group a common agreement was executed. It is submitted that there is no law under SEBI or otherwise barring entities from entering into a master / tripartite agreement which entails specific obligations of each of the entities.

17.11 Noticee has referenced an order of the Hon'ble SAT in the case of *Milind Gandhi vs SEBI, Appeal No. 277 of 2025 dated 23.02.2023* wherein, inter alia, SAT has held that merely being a signatory does not entitle the respondent to fasten the responsibility in absence of any other evidence.

17.12 Based on certain clauses in the agreement clarifies that the role of AFSPL was limited to providing stock broking services and not acting without the written instruction of the client, Money Mishra had assured wealth management services to the client. Vide the SCN the role of Money Mishra Group and AFSPL have been merged. However, the two are separate legal entities and liability cannot be imposed on noticee being a director of AFSPL for the alleged terms of the agreement which relate to the role of Money Mishra Group.

18. **Submissions of Noticee 6 (i.e Himanshu)** – The noticee has replied to the SCN vide letter dated 29.07.2023 and after the personal hearing vide email dated 05.02.2024. The reply of Noticee 6 is summarized herein below: -

18.1 Noticee 6 was merely an employee of AFSPL having job profile in IT division. and was responsible for trading terminal connection, server retrieval and management & other IT related work to ensure uninterrupted trading at exchange platform. He was appointed as a namesake director by AKM with no power or control over working of AFSPL.

18.2 He had no role to play with any policy matter, was not involved in any management decisions/activities, did not have any knowledge about the managerial decisions of AFSPL.

18.3 He has not signed any resolution approving execution of alleged agreements with Dalmia Group nor signed any of the said agreement. The main person who signed the agreements and who was independently indulged in dealing with Dalmia Group was AKM. This fact has been accepted by him.

18.4 Noticee's work profile was only limited to handling IT related work.

18.5 In every salary slip, his designation mentioned was of IT Manager and not director.

18.6 His salary was also deducted by AFSPL being an employee.

18.7 Loan taken by him was deducted from his salary, which would not be the case if he had been controlling the affairs of AFSPL. He was only a namesake director with no power and position and even with no knowledge of affairs of AFSPL.

18.8 The noticee was not allowed to interfere with the other divisions of AFSPL i.e account opening, DP divisions, back office & other managerial tasks including decision w.r.t execution of alleged agreements with Dalmia Group.

18.9 He has not earned any undue advantage out of the said alleged execution of agreements with Dalmia Group. Noticee has annexed copy of salary slips and bank statement in this regard.

18.10 Noticee has not signed any agreement for providing PMS facility either in capacity of director /AR of AFSPL or in his individual capacity, never met the parties i.e. VDPL/CTPL/ACHPL/Dalmia Group. He has never offered any

PMS services to them and also he was not aware of any such alleged dealings of Allied Group with Dalmia Group.

18.11 The noticee was a director in AFSPL from 15.12.2017 to 17.01.2019.The agreements of PMS dated 24.03.2017 and 15.05.2017 were signed prior to the appointment of noticee 6 as director and were in fact signed by AKM as director of AFSPL. As regards the agreement dated 30.03.2018 which was signed during the tenure of his directorship, the same was neither executed by him nor any consent was taken from him via board meeting.

18.12 Noticee has provided an affidavit on oath in original giving declaration w.r.t signatory of AFSPL in agreement dated 30.03.2018.

18.13 The noticee has made reference to the SAT order dated 28.06.2019 in the matter of *Dr.Jugal Kishore Satapathy vs. SEBI* w.r.t officer in default.

18.14 The three agreements were executed by the Dalmia Group entities with MMFS, MMPL, AKM & AFSPL. As per the language of the said agreements, the role of AFSPL was limited to providing broking and DP services and it was Money Mishra Financial Services who have represented itself to the investor that it is in the business of wealth managements services.

18.15 The Dalmia Group have affirmed that AKM of AFSPL represented to investors that MMFS is an expert in wealth management and has capabilities of providing services in option/future trading and is backed by good team to support.

18.16 The Dalmia Group has stated that as per the agreements while the trading and demat accounts were opened with AFSPL, MMFS was the wealth manager and would advise the trading strategy which would general returns on the amount invested. It was also agreed that if the trading account would show losses of 1% the trading would be stopped immediately.

18.17 MMFS and / or AKM was providing wealth management service to the Dalmia group whereas the role of AFSPL was limited to demat and trading account to the investor i.e Dalmia Group. And if at all it is assumed, without admitting the same for want of knowledge, that trading in the accounts of the Dalmia Group were being done by AFSPL without getting proper instructions then also it is the case of unauthorized trading and under no stretch of imagination to be considered as PMS services.

18.18 SEBI has already conducted investigation wrt alleged transfer of securities of Dalmia Group held in AFSPL and vide order dated 02.07.2021 penalty of Rs.2,00,000/- has already been imposed on noticee u/s 15HB of SEBI Act, 1992 and Rs.2,00,000/- u/s 19G of the Depositories Act, 1996 for being a negligent director. Further, the accepted law of *Res Judicata* and *Estoppel* restricts to initiate two different proceedings in the same cause of action against one person to secure ends of justice. The noticee cannot be penalized twice for same / similar cause of action revolving around the transfer of shares or managing the trading /demat accounts of Dalmia Group by AFSPL (allegedly by AKM/MMFS/ MMPL).

18.19 The noticee 6 has been summoned in his individual capacity as the name of AFSPL is missing beneath his name whereas in the entire SCN under reply there is not a single para mentioning any alleged direct role of noticee 6 having inference that he in individual capacity was involved in providing alleged PMS services to Dalmia Group. Even the name of noticee 6 was not mentioned in the alleged Allied Group referred in the SCN.

18.20 None of the agreements entered by AFSPL with Dalmia Group were signed by Noticee no 6. Noticee had no role in the execution of alleged agreements by AFSPL as;

- alleged agreements executed by Dalmia Group with Allied group were without knowledge and consent of noticee 6 as no reference to board meetings was given in any such agreement whereby AFSPL would have authorized execution of such agreements and appointed authorized signatory to sign such agreements.
- Noticee 6 did not sign any of the alleged agreements for and on behalf of AFSPL. Two out of the three alleged agreements were executed prior to the appointments of Noticee 6 whereas 3rd agreement with VDPL was also not signed by noticee 6 on behalf of AFSPL.

- No procedure of board meeting was ever followed by AFSPL, whereby noticee 6 could be aware of alleged execution of agreements by Allied group with Dalmia Group.
- Analysis of the past documents clearly indicates that AFSPL never called /held board meetings to take any approval from its directors (including noticee 6) prior to execution of alleged agreements (no date of board meeting is mentioned in any agreement). All the acts for and on behalf of AFSPL were being performed by AKM without adhering to due process of law w.r.t holding board meetings. When no board meeting was held by AFSPL as per law the noticee could not be aware of alleged agreements and hence cannot be made responsible for any alleged negligence as well.
- As per SCN it is understood that AFSPL had allegedly executed trades in the respective accounts of Dalmia Group without getting specific trade instructions from CTPL, VDPL and ACHPL which according to noticee is case of unauthorized trading by AFSPL and under no stretch of imagination be treated as alleged unauthorized PMS activity. Amid that it is AKM/MMPL/MMFS whose name is interchangeably used as expert in providing wealth management services (i.e PMS services) in SCN, agreements, reply of Dalmia Group and AKM's reply. Therefore dragging name of Noticee 6 in present matter is totally unconscionable and unconstitutional.

18.21 Noticee 6 was not considered as associated person of AFSPL and is not named in alleged "Allied Group".

18.22 Noticee was neither aware of execution of alleged agreements dated 30.03.2018 by AFSPL with VDPL nor has he signed said alleged agreement. While the alleged agreement dated 30.03.2018 though executed after the appointment of noticee as additional director, the same has not been signed by him. Amid that even though noticee was name sake director, no notice was served on him for any board meeting and even no board meeting was held as per noticee's knowledge having alleged agenda of execution of agreement with VDPL.

18.23 The role of AFSPL as per the agreements was limited to providing demat and trading account facility.

18.24 As per the reply of Dalmia Group, it was AKM who was dealing with the Dalmia Group.

18.25 Though Noticee 6 is not aware about the trades conducted in question, according to the statement of AKM, trades in Dalmia group accounts of VDPL, ACHPL and CTPL were made as per the instructions of Mr. Puneet Dalmia. Noticee 6 was neither aware of said transactions nor executed any of such trades in question.

18.26 It is AKM/MMPL/MMFS whose name is interchangeably used as expert in providing wealth management services. Hence AFSPL cannot be said to be involved in unauthorized PMS services. SCN has not been served to AFSPL. In light of non issuance of SCN to AFSPL dragging the name of noticee 6 without any merits and supporting evidence against him is totally unconscionable, unconstitutional & mockery to justice.

18.27 W.r.t Order dated 04.11.2022 passed by SEBI whereby AFSPL, AKM, MMFS and MMPL have been found to have carried on portfolio management activities without any registration from SEBI. Noticee is unable to understand when the matter has already been adjudicated and AFSPL, AKM, MMFS and MMPL and have booked them for unregistered PMS why present SCN is issued making noticee 6 an additional noticee when he had no role in the entire alleged activities.

18.28 The signature of the noticee 6 done in this reply can be cross checked with alleged signatures signed on behalf of AFSPL. Issuing SCN to noticee 6 merely because signatory on behalf of AFSPL could not be identified is totally unconscionable and unconstitutional on the part of SEBI and is therefore highly condemnable.

18.29 Noticee has neither signed any such agreements nor any approval was taken by AFSPL through due process of board meeting nor he was aware of execution of said agreement. Hence according to the proviso to Section 27(1) of SEBI Act, 1992 he cannot be responsible for any alleged contravention by AFSPL.

18.30 The noticee 6 deserves lenient view and constructive approach and hence no penal action be taken against him as he has already paid rupees four lakh penalty imposed on him u/s 15HB of SEBI Act, 1993 to secure ends of justice.

19. The noticee 6 was represented by his legal representative for the hearing which was held online through Webex on 30.01.2024. During the hearing, the noticee stated that he was not a director when agreements between the Allied Group entities and CTPL and ACHPL were signed. Though the noticee was not part of these agreements, it was noted that there were fund transactions and trading during the period that noticee was a director with AFSPL. Accordingly, he was asked to provide the details of his role in the company during this period. The noticeee in his reply vide email dated 05.02.2024 has stated that his responsibility was IT Manager. He has further stated that "*As a network and hardware employee my key responsibility was setting up and maintaining networks within an organization. Then offer support to staff members. As such, they need to have strong troubleshooting skills and be able to work with others to resolve issues. Maintaining the network, computers of the employee for connectivity and other hardware related issue. Other hardware like printout, attendance system maintenance was also my responsibility in Allied*". The noticee has also attached a copy of his Offer Letter dated 10.06.2017.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

20. I have carefully perused the SCN, materials available on the record and the replies received from Noticees 5 and 6. After considering the allegations made / charges levelled against the Noticees in the instant matter as spelt out in the SCN, the issue which arises for my consideration and determination in the present proceeding is whether the noticees have carried out unregistered PMS activities and if yes, the roles of the noticees /directors w.r.t such violations and the directions including monetary penalties, if any to be issued for the violation of the said provisions of law.

21. Before dealing with the issue framed above, the charges levelled against the Noticees and submissions made by the Noticees, it would be appropriate to refer to the relevant provisions of law alleged to have been violated in the matter, extract whereof is reproduced below:

21.1 Section 12(1) of the SEBI Act states that *"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"* .

21.2 Regulation 3 of the SEBI (PM) Regulations, 1993, stipulates that *"No person shall act as a portfolio manager unless he holds a certificate granted by the Board under these regulations."*

21.3 Regulation 42 (1) of the SEBI (Portfolio Managers) Regulations, 2020, *inter-alia,* states that SEBI (Portfolio Managers) Regulations, 1993, shall stand repealed from the date on which SEBI (Portfolio Managers) Regulations, 2020 regulations come into force. Further, Regulation 42 (1) (C) of the SEBI (Portfolio Managers) Regulations, 2020, *inter-alia*, states notwithstanding such repeal the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, incurred in respect of any violation committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed.

22. Before proceeding to deal with the aforesaid issues in the context of allegation made / charges levelled in the SCN, I find it appropriate to deal with the preliminary objections / issues raised by Noticee 5. The noticee has stated that the SCN has

been issued in 2023, whereas agreements in question were executed in 2017. It is submitted that there exists an unreasonable and inordinate delay of over six years in initiating proceedings against the noticee which greatly hampers noticee's ability to defend the allegations and therefore causes grave harm and prejudice to the noticee. The noticee has resigned from the position of director from AFSPL on 30.08.2017 and has no access whatsoever to the essential records and documents necessary to refute the allegations given in the SCN. Further, the noticee's request for inspection of documents referred to and relied upon by SEBI was made. Although the inspection of documents was granted on 04.10.2023, the noticee has contended that documents seized by SEBI in the search and seizure conducted on 19.08.2019 and 20.08.2019 and the copy of forensic audit report conducted by SEBI and the NSE were not provided. Further, during the inspection of documents, it was intimated that only statement of AKM was recorded. The Noticee 5 stated that had his statement been recorded at investigation stage and information sought from him, he would not have been named as a noticee in the SCN and proceedings would not have been initiated against him.

23. With regard to the issue of delay of almost 6 years in initiating proceedings, I note that SEBI had received a reference / email dated February 23, 2019 from NSE whereby NSE forwarded the preliminary observations of the inspection of AFSPL. The violations observed were for the period 2017-2019. SEBI had to examine the irregularities in the affairs of AFSPL pursuant to the preliminary observations and observed that AFSPL had violated various provisions of the SEBI Act, SCRA, different SEBI Regulations / Circulars for which SEBI had initiated proceedings against AFSPL, its directors and other entities. Further complaints were also received from various clients of AFSPL which required SEBI to conduct detailed examination/ investigation. There were multiple proceedings which were initiated by SEBI against AFSPL and other entities. *Exparte-Ad-Interim Order* was issued on 27.02.2019, wherein Noticee 5 was also arraigned as one of the noticee along with AFSPL, AKM and others. Thereafter, confirmatory Order was issued on 17.05.2019 and the final order was passed on 04.11.2022. Apart from these, orders have also been passed in connected matters for violation of other SEBI

Regulations. SEBI was also examining AFSPL's role alongwith other entities/directors w.r.t violations of other regulations such as the SEBI (Depository Participants) Regulations, 1996, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 which required detailed investigation. Further, it was during the course of the investigation w.r.t fraudulent transfer of securities from the accounts of certain entities by AFSPL it was observed that these entities had independently entered into an agreement with AFSPL and its associated entities. SEBI was required to carry detailed examination which required further time. Thereafter, during the investigation, certain information w.r.t the agreements was also sought from AKM. However, AKM did not provide the requisite information which led to further delay in the current proceedings. In this regard, it is pertinent to note that the Hon'ble SAT in the matter of *Girrajkumar Gupta HUF v/s. SEBI (Appeal no. 424/2019)* dated August 11, 2021, has, inter-alia, observed that…."*We find that the investigation started in the year 2015 which involved examining several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange. The show cause notice was issued in the October, 2017 and accordingly we find that there is no inordinate delay in the initiation of the proceedings*." I note that in the present matter, investigation commenced in March 2022 and was completed in June 2023 and SCN has been issued on July 23, 2023. Therefore, I note that there has been no delay in issuance of SCN. Hence the argument of Noticee w.r.t delay doesn't hold any merit.

24. With regard to the contention of the Noticee 5 that all the documents seized by SEBI in the search and seizure conducted in August 2019 and the Forensic Audit Report were not provided during the inspection of documents, I note that the SCN has neither relied upon these documents to level allegations against the noticee nor has referenced the same. Further, I note that the documents which have been relied upon to frame charges have been provided as annexures to the SCN and during the inspection of documents. Thus, I find that the contention of the Noticee 5 that documents procured by SEBI in its search and seizure operations and Forensic Audit Report have not been provided to him in violation of principles of

natural justice, is not tenable. Noticee no.5 has filed his detailed reply on January 30, 2024 and post hearing reply dated 07.02.2024. Noticee no. 5 has merely contended that delay in the matter has severally prejudiced him, however, neither in his reply nor during the hearing, he could point out any particular document or information which he could not retrieve due to delay in the matter and hence could not defend himself. In view of this, I find that Noticee no.5 cannot claim that the alleged delay has deprived him of a fair opportunity to defend himself.

25. Noticee 5 has also contended that his submissions during the personal hearing was not recorded properly. In this regard, I note that as observed in the record of proceedings, the noticee was also provided an opportunity to make further written submissions, if any, which the noticee has done. All submissions made by the Noticee have therefore been duly considered.

26. The noticees 5 and 6 have contended that while directors / erstwhile directors are arraigned as noticees to the SCN, SEBI has not arraigned AFSPL as a noticee to the SCN. It is submitted that joint and several liability of a company and director cannot arise, if the company itself has not been made a party to the proceedings. Thus SEBI ought not hold the noticees liable for the alleged violations, while SEBI has not named the company as a noticee for the alleged violations in the current proceedings. Noticee 5 has further contended that while the Order dated 04.11.2022 passed by SEBI also alleges violation of Portfolio Managers Regulations, the same is for a distinct and separate finding, whereas the present proceedings form a fresh cause of action and therefore necessitates that the company i.e. AFSPL also be named as a noticee to the SCN to justify any action against the Noticee 5 who was a director in AFSPL. According to Noticee 5, Paragraph 40 of the Order dated 04.11.2022 crystallizes the issue as to how the Portfolio Managers Regulations were violated in that matter by AFSPL, which has no bearing to the matter at hand. He also stated that the Noticee 5 was rightly not named in the Order dated 04.11.2022 despite being a director of AFSPL during the period stipulated in the order.

27. In this regard, I note that the Whole Time Member (WTM), SEBI vide order dated 04.11.2022 *inter alia*, concluded that AFSPL carried out activities covered under the definition of "portfolio manager" without holding a valid certificate of registration and has thus violated Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993 and Regulation 42 of SEBI (Portfolio Managers) Regulations, 2020. The violation of the PMS Regulations for the period 01.04.2017 to 31.01.2019 have been dealt with in the Order, though in a limited manner. Although the WTM's order concluded that the PMS activities of AFSPL were based on the evidence that it was providing returns to the clients based on credit balances of funds / securities as opposed to returns from trading activities, additional evidence such as agreements between AFSL and the other entities, corresponding fund transfers, terms of the agreement of the PMS etc. have also been brought in during the instant proceeding. However, AFSPL has been already debarred vide the said WTM Order and has been prohibited from buying and selling or dealing in securities for seven years under Section 11(1), 11(4), 11B(1) and 11B(2) and penalty has also been imposed on AFSPL. It is also noted that vide another order dated 17.05.2023, the WTM has cancelled the certificate of registration of AFSPL u/s 12 (3) of the SEBI Act, 1992 r/w Regulation 27 of the SEBI (Intermediaries) Regulations, for violations committed by it as a registered intermediary, pursuant to an enquiry. The aforesaid Order clearly mentions, *inter alia*, that AFSPL had carried out activities covered under the definition of portfolio manager without holding a valid registration and has violated the provisions of Section 12(1) of the SEBI Act, 1992 r/w Regulation 3 of the SEBI (Portfolio Managers) Regulations 1992 read and Regulation 42 of the SEBI (Portfolio Managers) Regulations, 2020. In view of the above, I find that the actions have already been taken against AFSPL for its unregistered portfolio management activities.

28. Noticee 5 had also submitted that although there is a recommendation made in the investigation report, SEBI has not taken action against AFSPL for the violations mentioned in the report. In this regard, from the documents available on record, I note that although the investigation report recommended that action be taken

against AFSPL, considering that the WTM has already passed an order against AFSPL on 04.11.2022, SEBI has decided not to proceed against AFSPL . As action against the company ie. AFSPL is already completed, the action against the directors who were not named in the earlier order i.e. Noticees 5 and 6 as well as the other noticees who have signed the agreements have to be adjudged in the present proceedings.

29. Noticee 6 has contended without admitting the violations that the trading in the accounts of CTPL , VDPL and ACHPL by AFSPL without getting proper instructions would be a case of unauthorized trading and under no stretch of imagination it can be considered as PMS services and dragging the Noticee 6 in the present SCN at the behest of director of AFSPL w.r.t alleged unauthorised PMS activities done by AFSPL is totally unconscionable and unconstitutional and deserves to be withdrawn qua Noticee 6 in the interest of justice. Even if it is admitted for the sake of argument that the activities of AFSPL are considered as unauthorized trading, the noticee would still be liable for such violations as he was the director in the company. The Hon'ble Supreme Court of India in the matter of *Shri N. Narayanan vs. SEBI[(2013) 12 SCC 152]* decided on 26.04.2013, has observed that -"... *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*." Hence, the directors are liable for the acts of the company whether it is carrying out unregistered PMS activities or unauthorized trading. Further, there were agreements that were executed between the Allied Group and the Dalmia Group, also the bank transactions and trading details which clearly brings out the activities of AFSPL as an unregistered portfolio manager. The same are explained in detail in subsequent paragraphs.

30. Noticee 6 has also stated in his reply that he has already been penalized in an earlier order dated 02.07.2021 for his alleged negligence in the working of AFSPL and he cannot be penalized twice for the same /similar cause of action revolving around the transfer of shares or managing the trading / demat accounts accounts of Dalmia Group Accounts by AFSPL (allegedly by AKM/MMS/MMPL). The present

SCN is for a similar cause relating to Dalmia Group and is in grave violation of principle of res judicata.

31. I note that the order dated 02.07.2021 referred by the Noticee 6 which was passed against the noticee as director and compliance officer of AFSPL was w.r.t the fraudulent transfer of mutual fund units from the accounts of certain clients for which proceedings were conducted for the violation of the provisions of the SEBI (Depository Participants) Regulations, 1996, SEBI (Depository Participants) Regulations 2018, SEBI (PFUTP) Regulations and SEBI Circulars . The noticee had challenged the order against him before Hon'ble Securities Appellate Tribunal (SAT) w.r.t charges of fraud and I note that SAT had quashed the SEBI order w.r.t the violation of the SEBI (PFUTP) Regulations against the noticee while upholding the other violations. However, the present proceedings against the noticee are for violation of the SEBI (Portfolio Managers) Regulations.

32. Having dealt with the preliminary objections, I now move on to the main allegation i.e. whether the noticees have carried out unregistered PMS activities. Before proceeding further, it will be relevant here to note the definition of a portfolio manager as defined under regulation 2 (cb) of PMS Regulations, 1993. As per the said regulation, for an entity to be categorised as a portfolio manager, following parameters have to be met:- (i) There has to be a contract or arrangement between the intended portfolio manager and the prospective client. (ii) The intended portfolio manager would advise or direct or undertake (whether discretionary or otherwise) on behalf of the prospective client the management or administration of a portfolio of securities or funds of his prospective client.

33. During the investigation, it was observed that AKM who is the Managing Director in AFSPL was a director in MMPL and also a Managing Partner in MMFS and oversaw all the activities of these entities. Further, JKT was also a director in AFSPL, director in MMPL and partner in MMFS. During the investigation by SEBI on 31.05.2022, AKM has categorically stated that he was the Managing Director in AFSPL and oversaw all its activities.

34. From the documents available on record it is noted that AFSPL, AKM, MMFS and MMPL had entered into separate agreements with the Dalmia Group entities viz VDPL, CTPL and ACHPL. The agreements were signed by AKM (on behalf of self and MMPS/MMPL), JKT (on behalf of MMPS/MMPL) and Lalit (on behalf of AFSPL). The details of the agreements are detailed at preceding para No.8.3 of the said order.

35. From the common clauses of the agreements which have also been brought out in the SCN and also at Para 8.9 above, it is evident that the Allied Group entities were managing the funds transferred by the CTPL, VDPL and ACHPL to AFSPL /MMFS. In one of these clauses, as mentioned at Para 8.9 (f) it is mentioned that the investment amount was to be solely deployed by MMFS for the purpose of investment into securities / trading into the securities through AFSPL. Further, based on the representations of AFSPL, MMFS, AKM and MMPL, AFSPL would provide its services to the investor in respect of its demat account and would not deal with the account without the written instruction of the investor who had opened demat account with AFSPL. In consideration of the obligations of AFSPL and MMS [ie MMPL, MMFS and AKM] under this agreement, the investor would pay such charges to AFSPL for the purpose of opening and maintaining the demat account for carrying out the instructions of the investor and for rendering such other services as may be agreed to from time to time between AFSPL and the investor. Clause (k) at Para 8.9 also states that AFSPL and MMS had guaranteed the investor, the investment amount at maturity or any time before. In clause at Para 8.9 (l), AFSPL and MMS had agreed to manage the trading and demat account of the investor. Further MMFS had agreed to stop all trading in the trading and demat account of the investor, if in case the total loss in that account at any given point of time reaches upto 1% of the total / cumulative investment amount. In clause at Para 8.9 (m) AFSPL and MMS had agreed that they would transfer the money / income / funds generated through the trading activities to the bank account designated by the investor at the request of the investor, irrespective of the fact whether the money / income / funds are generated in the account of AFSPL or

MMS. Further, MMS jointly and severally undertook that they would cause AFSPL to fulfill its obligations in respect of the demat account of the investor held at AFSPL and inthe event of default or breach of AFSPL, MMS and AFSPL would be jointly and severally liable for the consequences.

36. Hence from the clauses of the agreements, it is evident that the Allied Group entities would manage the funds transferred by the Dalmia Group entities to AFSPL / MMFS. The respective Dalmia Group entity had opened a demat and trading account with AFSPL based upon the assurance of AFSPL that it shall provide the services to the investor in relation to the opening of the demat and trading account and operation of the same. I note that although MMFS has represented to the investor that it is in the business of wealth management services and AFSPL has the capability of providing the services as per the agreement, AFSPL and MMFS have also guaranteed to the investor the investment amount at maturity or at any time before. Further, both AFSPL and MMFS have also agreed to manage the trading demat account of the investor. MMFS has also agreed to stop all the trading in the trading and demat account of the investor, if in case the total loss in that account at any given time reaches upto 1% of the total / cumulative investment amount.

37. During the investigation, the Dalmia Group has also stated, *inter alia,* that AKM represented to them that MMFS is an expert in wealth management and has the capability of providing services in options / futures trading and is backed by a good team to support. CTPL, ACHPL and VDPL entered into agreements with AFSPL on 24.03.2017, 15.05.2017 and 30.03.2018 respectively. AFSPL started making returns on the investments by trading in the account of CTPL as per the agreement. Pursuant to the agreements which were signed, no instructions for trading were ever given by CTPL, ACHPL and VDPL. AFSPL used to carry out trading in their respective accounts and used to send notes / statements to the concerned three investor entities. The investment amount was paid upfront and the trading strategy would be limited to the amount invested which was to be used for margin. The entities did not provide securities as margin. Pursuant to the agreements, all

payouts were made at the request of the investor from out of the balances in the ledger account.

38. During the statement recording held on 31.05.2022, AKM *inter-alia*, stated that the said agreements were entered for opening of demat accounts of VDPL, CTPL and ACHPL. The agreements were done to ensure that the VDPL, CTPL and ACHPL provide the fund component of the margin and returns generated by trading in the accounts of VDPL, CTPL and ACHPL are transferred to their respective bank accounts. Trading was exclusively done in the derivative segment. He had further stated that instruction from VDPL, ACHPL and CTPL for carrying out trading in the demat account of these companies came from Puneet Dalmia, who is one of the promoters of the Dalmia group companies.

39. AKM vide summons dated 02.08.2022 was specifically advised to provide the details of the trades executed by AFSPL for the Dalmia Group entities and the record of receiving instructions given to AFSPL for each such transactions. The requirement to preserve the record on instructions for undertaking a transaction for a client is stipulated under the SEBI Circular No. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated 26.09.2017 (*I note that SCN has wrongly referenced this Circular as MIRSD2 /CIR/2016/95 dated September 26, 2016*). However, AKM failed to produce any documentary record of receiving instructions from Puneet Dalmia or any other person for the transactions undertaken by them in the accounts of Dalmia group entities.

40. AKM vide his letter dated 30.05.2022 in reply to the summons dated 25.04.2022 *inter alia*, had submitted that as per the arrangement, AFSPL was given permission by all the Dalmia Group entities to enter into trades in F&O segment etc. "*as per the strategies deemed proper by AFSPL*". The same has also been confirmed by Dalmia group entities in their reply dated July 04, 2022, wherein it was submitted that no specific authorization for any of the trade was ever given by the Dalmia group entities because pursuant to the agreement, AFSPL used to carry out trading on its own. Therefore, it is evident that the specific decisions for trading done in the

accounts of CTPL, VDPL and ACHPL were taken by Allied group entities. Thus, I conclude that the securities transactions in the accounts of CTPL, VDPL and ACHPL were managed/administered by Allied group entities on behalf of the Dalmia Group entities.

41. CTPL, VDPL and ACHPL in reply to SEBI summons dated 23.06.2022 vide email dated 04.07.2022 have stated, *inter alia*, that AKM represented to them that Allied Group entities are experts in wealth management and have the capability of providing services in options / futures trading and is backed by a good team to support. Also it was assured that there would be only profits from investments. As per the agreements with regard to CTPL, VDPL and ACHPL, while the trading and demat accounts were opened with AFSPL, MMPS was the wealth manager and would advise the trading strategy which would generate returns on the amounts invested. It was also agreed that if the trading account would show losses of 1%, the trading would be stopped immediately. As per the terms of the agreements, the investment amounts would be paid upfront and the trading strategy would be solely based on the amount invested. It is also pertinent to mention that no specific authorization for trading were ever given by the investors and pursuant to the agreements, AFSPL used to carry out trading on its own. Hence, I conclude that these trades were based on the agreements and completely at the discretion of Allied Group rather than the instructions of the clients.

42. As per the agreements discussed above, AFSPL alongwith MMFS and MMPL and AKM were to manage the funds of CTPL, VDPL and ACHPL. These entities had transferred funds to AFSPL and the same was used to trade in the futures and options segment of the stock exchanges.

43. The following details are noted w.r.t the funds the Dalmia Group entities have paid/received to/from the Allied Group entities : -

Cointribe Technologies Private Limited			
Payment date	**Receipt / Payment**	**Amount**	**To/from**
11-Jan 17	Payment	1,00,00,000	AFSPL
11-Jan 17	Payment	1,00,00,000	AFSPL

Cointribe Technologies Private Limited			
Payment date	**Receipt / Payment**	**Amount**	**To/from**
23-Feb-17	Payment	1,00,00,000	AFSPL
23-Feb-17	Payment	1,00,00,000	AFSPL
3-Mar-17	Receipt	3,00,00,000	AFSPL
10-Mar-17	Receipt	3,00,00,000	AFSPL
17-Mar-17	Receipt	3,00,00,000	MMFS
23-Mar-17	Receipt	1,00,00,000	AFSPL
24-Mar-17*	Receipt	2,00,00,000	MMFS
31-Mar-17	Receipt	3,00,00,000	MMFS
10-Apr-17	Payment	5,75,00,000	AFSPL
19-Apr-17	Payment	6,00,00,000	AFSPL
25-Apr-17	Receipt	5,75,00,000	AFSPL
01-Jul-17	Receipt	2,00,00,000	MMFS
07-Jul-17	Receipt	3,00,00,000	AFSPL
28-Jul-17	Receipt	2,56,00,000	MMFS
29-Jul-17	Receipt	1,28,01,098	AFSPL
21-Sep-17	Receipt	14,10,00,000	AFSPL
21-Sep-17	Payment	15,00,00,000	AFSPL
04-Oct-17	Payment	25,00,000	
10-Apr-18	Receipt	20,25,00,000	AFSPL
11-Apr-18	Receipt	5,06,93,713	AFSPL

*****Agreement entered with Allied group entities on March 24, 2017*

As noted above, the agreement between Allied Group and CTPL was executed on March 24, 2017. In the said agreement, it was mentioned that the CTPL had already transferred Rs. 4,00,00,000/- and in future may transfer certain sums of money over a period of time to MMFS and/or AFSL. From the ledger of CTPL (as available from April 01, 2017 till April 11, 2018), it is noted that as on April 01, 2017, CTPL had an opening balance of Rs.6.93 lakh. Hence as can be seen from the terms of the agreement, CTPL had already transferred a sum of Rs. 4,00,00,000/- to AFSPL, even before signing the agreement. Further, funds were also transferred to/from MMFS/AFSPL after the agreement was signed.

Vinimay Developers Private Limited			
Payment date	**Receipt / Payment**	**Amount**	**To/from**
21-Sep-17	Paid	4,00,00,000	AFSPL
27-Sep 17	Received	2,40,00,000	AFSPL
17-Aug-18*	Received	2,00,00,000	AFSPL
31-Aug-18	Received	50,00,000	AFSPL

** Agreement entered with Allied group entities on March 30, 2018*

From the ledger of VDPL (as available from September 21, 2017 till January 16, 2019), it is noted that as on September 21, 2017, VDPL had nil opening balance. On September 21, 2017, Rs. 4,00,00,000/- were transferred to AFSPL by VDPL and the same were utilized for trading in the F&O segment. It is noted that although the agreement between VDPL and Allied group was entered on March 30, 2018, Allied group entities were trading in the F&O segment for VDPL since December 11, 2017. The agreement also stated that a sum of Rs.4 crores has already been transferred which is also evident from the ledger. Further, the credit made by VDPL to AFSPL were majorly being used for trading in F&O segment. The payments were made to VDPL by AFSPL out of its credit balance available with AFSPL.

Antordaya Commercial & Holdings Private Limited			
Payment date	**Receipt / Payment**	**Amount**	**To/from**
02-Jun-17*	Paid	2,50,00,000	AFSPL
05-Jun-17	Paid	2,50,00,000	AFSPL
06-Jun-17	Paid	1,50,00,000	AFSPL
08-Jun-17	Paid	3,50,00,000	AFSPL
27-Jun-17	Paid	6,75,00,000	AFSPL
05-Jul-17	Paid	3,25,00,000	AFSPL
21-Sep-17	Received	19,00,000	AFSPL
21-Sep-17	Received	18,81,00,000	AFSPL
27-Mar-18	Received	10,00,000	AFSPL
10-Apr-18	Received	19,00,00,000	AFSPL

** Agreement entered with Allied group entities on May 15, 2017*

The agreement with ACHPL also stated that the investor shall transfer a sum of Rs.20 crores as investment amount in one or more tranches which is evident from the above table that the amounts were transferred after the agreement was signed on 15.05.2017.

44. The entity-wise total amount paid to AFSPL and the total amount received from the Allied Group entities are as under :-

Entity	**Total amount paid to AFSPL**	**Total amount received from AFSPL/MFS**
CTPL	Rs. 31,00,00,000	Rs. 69,00,94,811
VDPL	Rs. 4,00,00,000	Rs. 4,90,00,000
ACHPL	Rs. 20,00,00,000	Rs. 38,10,00,000

45. It is observed from the tables provided at Para 43 that returns were provided by AFSPL to its clients CTPL, VDPL and ACHPL. The trading was done majorly during the period the fund transactions were done between the Allied group entities and Dalmia Group entities. The fund transactions are also reflecting in the bank account

statements of CTPL, VDPL and ACHPL. Further the aforesaid transactions done by CTPL and VDPL with AFSPL are also reflected in the financial ledger of CTPL and VDPL with AFSPL. It is seen from the financial ledger of CTPL and VDPL and bank statements of CTPL, VDPL and ACHPL, that there was flow of funds from/to AFSPL or MMFS to/from CTPL, VDPL and ACHPL and the same was used as margin in the F&O segment. Thus the Dalmia Group entities had transferred funds to AFSPL/ MMFS to trade on NSE.

46. Further, trade details were sought from BSE, NSE and MSEI for the trades executed by AFSPL for its clients CTPL, VDPL, and ACHPL and for the period January 01, 2017 till date i.e. August 02, 2022. As per the trade details provided by NSE via email dated September 02, 2022, it is observed that trades were executed by AFSPL for CTPL, VDPL and ACHPL in the F&O segment of NSE during the said period. Trades have also been executed in the account of ACHPL in the equity segment of NSE through AFSPL during the said period. No trades were executed at BSE.

47. I further note that AKM vide summons dated 02.08.2022 was specifically advised to provide the record of receiving instructions given to the AFSPL for these transactions which is also stipulated in the SEBI Circular. However, AKM has failed to produce documentary record of receiving the instructions for execution of trades on behalf of the Dalmia Group entities. AKM vide his letter dated 30.05.2022 has stated that as per the arrangement, AFSPL was given permission by all the Dalmia Group entities to enter into trades in F&O segment etc as per the strategies deemed proper by AFSPL. The same is also confirmed by Dalmia Group entities in their reply dated 04.07.2022 wherein they have submitted that pursuant to the agreement, AFSPL used to carry out trading on its own and no specific authorization for any trade was ever given by them. Hence, it is evident that pursuant to the agreements, specific decisions for trading in the accounts of CTPL, VDPL and ACHPL were taken by the Allied Group entities and thus securities transactions in the accounts of CTPL, VDPL and ACHPL were managed and administered by the Allied Group entities.

48. Hence, from the preceding paragraphs, I note that CTPL, VDPL and ACHPL had entered into agreements with AFPSL, AKM, MMFS and MMPL who are associated to manage their funds by trading in F&O segment and provide returns on the same. Thus funds of the Dalmia Group entities were clearly being managed by the Allied Group and trades were being executed by the AFSPL on NSE.

49. From a collective reading of the clauses of the agreements, evidence gathered at the time of investigation, the reply of AKM, submissions made by the Dalmia Group entities, the fund transactions, the trading transactions, it is evident that MMPL and AKM (who were holding 70% and 30% of the shares in AFSPL pursuant to a share purchase agreement dated 09.07.2016) alongwith MMFS who was shown as the wealth manager had entered into agreeements with the Dalmia Group entities. Further, AKM has also entered into the agreements in his individual capacity. Hence, these noticees based on the agreements have managed the funds, trading/demat accounts, guaranteed the investment amount at maturity, agreed to stop trading in case total loss in the account reaches upto 1% of the total / cumulative investment amount for its clients and were thus providing portfolio management services. The definition of "portfolio manager" under Regulation 2(cb) of the SEBI (Portfolio Manager) Regulations, 1993 states that any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the client, as the case may be. Hence, it is evident that the noticees were in control of the funds of their clients and were making investment decisions for their clients.

50. I further note that the Whole Time Member, SEBI, vide Order dated 04.11.2022 while dealing with the other violations, *inter alia*, has already concluded that AFSPL has carried out activities covered under the definition of portfolio manager without holding a valid certificate of registration and thus violated Section 12(1) of SEBI Act, 1992, read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993,

and Regulation 42 of SEBI (Portfolio Managers) Regulations, 2020. Further, vide an Order dated 17.05.2023 the registration certificate of AFSPL has also been cancelled for violation of various regulations, including that of carrying out activities under the definition of portfolio manager without holding a valid certificate of registration.

51. Having recorded the findings on the contravention of carrying unregistered PMS activities by Noticees 1, 2 and 3 i.e. AKM, MMFS and MMPL the next issue that arises for consideration is the liability of the directors / partners for the contraventions established in the preceeding paragraphs. Once a contravention is established, it becomes necessary to ensure that persons in charge of the company during the relevant period are held accountable. Directors are responsible for the day to day management of the company and have duty to ensure that the company is complying with the applicable regulatory norms. Hence the directors in such cases cannot escape from the liability arising out of contraventions by the company.

52. AKM and JKT were the partners / directors of MMFS and MMPL who are found to have carried out unregistered portfolio management services. Hence as partners / directors, AKM and JKT are liable for the violations committed by MMFS and MMPL. I also note that AKM and JKT have neither provided a defense nor have denied the charges. Hence I hold Noticees 1 and 4 liable for the violations committed by MMPS and MMPL.

53. With regard to the role of Noticee 5, I have gone through the written submissions as well as the oral submissions made during the personal hearing on behalf of Noticee 5 (Lalit). I note that he was appointed as a director of AFSPL on 07.06.2002 and ceased to be a director on 30.08.2017. Further, based on a Share Purchase Agreement (SPA) dated 09.07.2016 which was entered into between AFSPL and MMPL, AKM had the sole control over the affairs of AFSPL and was in charge of the day to day affairs of AFSPL. Further, in the proceedings which were initiated by SEBI vide *Ex*-Parte Order dated 27.02.2019 wherein the noticee

5 was also arraigned as director in AFSPL in the proceedings, the directions against the noticee 5 were dropped in the Confirmatory Order by SEBI dated 17.05.2019 wherein WTM has stated, *inter alia*, "*The violations alleged in the interim order are for the period from 01/05/2017 to 31/01/2019. I also note that Noticee no. 2 to 4 have filed undertakings in respect of any liability that falls upon them in the present proceedings. On the basis of the said undertakings, the restrictions imposed in the interim order on the operation of the bank accounts of the said Noticees were revoked after the personal hearing held on 25/03/2019. Therefore, in view of the above, I find that continuation of interim directions in force, against Noticee no. 2 to 4 may not be warranted at this stage. However, if the involvement of Noticee nos. 2 to 4 is found in the Forensic Audit or the investigation/inquiry by SEBI, they shall also be liable in accordance with law*." Further, when the final order dated 04.11.2022 was passed, the Noticee 5 was not proceeded with.

54. It is also submitted that the Noticee 5 was a non-executive director and was not part of the day to day management of AFSPL and had no control/ supervision over the decisions made by AFSPL. The noticee was not a director most of the period of during the fund transactions and the trading period. I further also note that apart from Noticee 5 signing the agreements on behalf of AFSPL with CTPL (24.03.2017) and ACHPL (15.05.2017) prior to his resignation (30.08.2017), there is no other convincing documentary evidence to conclude that Noticee 5 was also involved in the unregistered portfolio management activities carried out by this Noticee.

55. At this juncture, it will be relevant to quote the Order of Hon'ble Securities Appellate Tribunal in the matter of *Milind Gandhi* v. SEBI decided on 23.03.2023 , wherein Hon'ble SAT had stated, inter alia, that "*We find that that the AO has given a finding that since the appellant was a signatory to the Information Memorandum in that event he is also responsible for the misrepresentation of the financials of the Company. In our opinion, such an approach is patently erroneous in as much as merely by being a signatory does not entitle the respondent to fasten responsibility.*

There has to be something more than just his signatures and in the absence of any other evidence, the liability cannot be fastened only on this ground." Further, the *Hon'ble Supreme Court in the matter of Susela Padmavathy Amma vs Bharti Airtel Limited* has held, inter alia, "*It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-today functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company*……..".

56. In view of aforesaid, although the said noticee had signed the agreements, I am constrained to give benefit of doubt to the noticee and conclude that Noticee 5 cannot be held liable for the unregistered portfolio management activities.

57. W.r.t Noticee 6 (Himanshu), I note that he joined as an IT Manager in AFSPL. He was appointed as an Additional Director of AFSPL during the period 15.12.2017 to 17.01.2019. The two agreements i.e. with CTPL (24.03.2017) and ACHPL(15.05.2017) were signed prior to him joining AFSPL and he has affirmed that he is not a signatory to the agreement with VDPL (30.3.2018).

58. However, here it is pertinent to mention that in an earlier order passed by SEBI in the case of AFSPL dated 02.07.2021, the WTM held the Noticee 6 negligent in his duties and responsibilities as the director and compliance officer of AFSPL. It was explicitly found by the WTM that "*While he may have been appointed as a Manager and may have continued to receive remuneration of a Manager, I note that he has consented to act as a Director in* AFSPL and his appointment has been approved by the Board of AFSPL….. *Noticee claims that he had no authority to approved, sign documents or do any type of transaction on behalf of AFSPL, I note that MCA records that he has signed the adopted financial statements of AFSPL for FY 2017-18, in his capacity as Additional Director. Hence, this submission cannot be accepted*". I further note that the noticee has not contended his position as director and compliance officer of AFSPL in his appeal before SAT against the order

passed by WTM. He has only contended against the charges of fraud that were framed against him.

59. I find that Noticee 6 was not only a director but also compliance officer of AFSPL during the period of violation and hence it was expected that he be responsible to flag these issues of unregistered PMS activities of AFPSL to the regulatory authorities. The directors are statutorily expected to exercise due care and diligence as expected from prudent person, which includes running the affairs of the company within the relevant statutory provisions. I note that for contraventions of the law committed by the company, apart from the company, the directors of the company, who at the time of the contravention were having knowledge of the said contravention or the director whose negligence contributes to the contravention of law, are liable for the said contravention.

60. Hence, I am of the considered view that Noticee 6 is liable for the unregistered portfolio management services which were conducted during the period of his directorship with AFSPL thereby in violation of the provisions of the SEBI (Portfolio Manager) Regulations, 1993.

61. The SCN further alleges that during the course of investigation certain information was sought from Noticee 1 i.e. AKM vide summons dated 07.12.2022. However, AKM failed to provide the information sought by the Investigating Authority w.r.t names of the signatories on behalf of Allied Group entities who have entered into the agreements with the Dalmia Group and the contact details of JKT who was a partner in MMFS and one of the directors of AFSPL and MMPL. Thus, he has failed to provide the information sought in the summons in violation of Section 11C (2) & (3) of the SEBI Act.

62. I observe that the noticee was required to provide the details sought vide summons dated 07.12.2022. From the available documents I note that the summon was served on AKM through Speed Post, hand delivery and also sent to his email ID. However, AKM has not provided the information inspite of the summon being

served on him. The Noticee was also informed of the consequential proceedings of adjudication and prosecution for failure to provide the requisite information. However, the noticee neither furnished the details sought by IA nor provided any reasons for not being able to comply with the requisition.

63. I am also of the view that it is the duty, responsibility and obligation of every person from whom information is sought to fully co-operate with SEBI and promptly produce all documents, records, information, etc. If the summons issued by SEBI are allowed to be flouted and not taken seriously, SEBI, as the market regulator will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. Had the noticee complied with the summons and provided the factual information at the appropriate time, SEBI would have been in a better position to examine the role of the signatories to the agreement especially with VDPL which could not be identified. As the Noticee did not provide the requisite information nor did he respond to the summon in any manner his defiant conduct has certainly thwarted the attempt by SEBI to gather further evidence for a timely conclusion of the investigation proceedings. I further observe that the information sought was very significant and relevant, which would have enabled to draw precise conclusions in the matter especially w.r.t information as to the signatories of the agreements as well as the details of JKT.

64. Hence, as noted from the preceding paragraphs, it is established that the noticees 1, 2, 3, 4 and 6 have violated the provisions of the SEBI Act, 1992, SEBI (Portfolio Managers) Regulations, 1993, and SEBI (Portfolio Managers) Regulations, 2020. Therefore, the Noticees are liable for:-

    a. Issuance of appropriate directions under Sections 11B(1) and 11(4) read with Section 11(1) of the SEBI Act, 1992 for violation of Section 12 (1) of the SEBI Act, 1992 and Regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993.
    b. Imposition of monetary penalty under Sections 11B(2) and 11(4A) read with Section 15 HB (penalty for contraventions where no separate penalty

has been provided) of the SEBI Act and further penalty u/s 15A(a) for non compliance of summons by Noticee 1.

65. The penalty provisions under the SEBI Act, 1992 are reproduced below:

Penalty for contravention where no separate penalty has been provided.

15HB*. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a) *to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;*

66. For imposition of penalties under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

"Factors to be taken into account while adjudging quantum of penalty.

15J*. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section

15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

67. I note that the investigation has not brought out the disproportionate gain or unfair advantage that has been made as a result of the default of the Noticees. It is also seen that SEBI has already issued orders against the Noticees 1,2,4 and 6 for securities law violations in connected matters. However, there is no material on the quantum of loss suffered by the clients / investors due to the acts of the Noticees.

68. I note that AKM, JKT, MMFS and MMPL were directly involved in the violations and have also signed the agreements. AKM was not only representing AFSPL, MMPL and MMFS but was also an individual party to the agreements and hence his degree of involvement in this unregistered PMS activities needs to be dealt more severely. Although there is no direct involvement of Noticee No. 6 in the unregistered PMS activities like signing of agreement, he has, however, not been alert in his duties and responsibilities as a director and compliance officer during the period of fund transaction and trading. Hence, imposing penalty would be sufficient to meet the ends of justice for the violations. Further, I also note that Noticee 6, in the matter of AFSPL for violation of other regulations vide order dated 02.07.2021 has already been restrained from accessing the securities market and from buying and selling or dealing in securities, either directly or indirectly, in any manner whatsoever for a period of three years. These factors have been taken into account while levying directions and imposing penalty.

DIRECTIONS

69. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4) and 11B (1), 11B (2) read with of Section 19 of the SEBI Act, and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, do hereby pass the following directions:-

(a) The Noticees, Awanish Kumar Mishra, Money Mishra Financial Services, Money Mishra Securities Pvt. Ltd., and Jitendra Kumar Tiwari are restrained from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of three (3) years from the date of this Order.

(b) The following penalty is levied on the Noticees and they are further directed to pay the penalty within a period of forty-five (45) days, from the date of receipt of this order;

Under Section	Awanish Kumar Mishra	MMPL	MMFS	Jitendra Kumar Tiwari	Himanshu Arora
15 HB of SEBI Act, 1992	Rs. 10 lakhs	Rs. 5 lakhs	Rs. 5 lakhs	Rs. 5 lakhs	Rs. 2 lakhs
15 A(a) of SEBI Act, 1992	Rs. 3 lakhs	-	-	-	-
TOTAL	**Rs. 13 (Thirteen) Lakhs**	**Rs. 5 (Five) Lakhs**	**Rs. 5 (Five) Lakhs**	**Rs. 5 (Five) Lakhs**	**Rs. 2 (Two) Lakhs**

(c) The Noticees shall remit / pay the said amounts of penalty through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in The details/ confirmation of e-payment should be sent to “The Division Chief, Investment Management Division (IMD), SEC Division-1, SEBI Bhavan I, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051” and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

(d) The Noticees shall not undertake, either during or after the expiry of the period of debarment / restraint as mentioned above, either directly or indirectly, portfolio management services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

70. It is hereby clarified that if any of the Noticee mentioned at Para 69 (a) has any open position in any exchange traded derivative contracts, as on the date of this order, he can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees are permitted to settle the pay in and pay out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

71. This order shall come into force with immediate effect.

72. If there is a failure to pay the penalty, as mentioned above, SEBI may recover the amount from the Noticees as per applicable law.

73. A copy of this order shall be sent to the Noticees, Stock Exchanges, Depositories and Registrar and Transfer Agents to ensure that the directions given above are strictly complied with.

DR. ANITHA ANOOP

Date: April 30, 2024 **CHIEF GENERAL MANAGER**

Place: Mumbai **SECURITIES AND EXCHANGE BOARD OF INDIA**