National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/67563	Date: April 15, 2025
Circular Ref. No: 462/2025	

To All NSE Members,

Sub: **SEBI Order against Kalapi Shah in the matter of Anugrah Stock & Broking Private Limited.**

This is with reference to SEBI vide order no QJA/GR/MIRSD/MIRSD-SEC-5/31375/2025- 26 dated April 15, 2025, wherein SEBI has restrained following entity from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 years from the date of this order.

Sr. No.	Noticee	PAN
1	Mr. Kalapi Shah	ASAPS3736M

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

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

National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

Annexure: SEBI Order against Kalapi Shah in the matter of Anugrah Stock & Broking Private Limited.

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11(1), 11(4), 11B (1) and 11D of the Securities and Exchange Board of India Act, 1992 read with Regulation 12A of the Securities Contracts (Regulation) Act, 1956, Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Mr. Kalapi Shah	ASAPS3736M

In the matter of Anugrah Stock & Broking Private Limited

BACKGROUND

1. Securities and Exchange Board of India **("hereinafter referred to as SEBI")** passed final order - WTM/SM/MIRSD/MIRSD_DPIEA/24256/2022-23 dated February 28, 2023 in the matter of Anugrah Stock and Broking Private Limited (hereinafter referred to as **"ASBPL"**) in respect of 1) Anugrah Stock & Broking Private Limited, 2) Mr. Paresh Mulji Kariya, 3) Ms. Sadhana Paresh Kariya and 4) Om Sri Sai Investments, finding them guilty of engaging in providing Derivative Advisory Services (hereinafter referred to as **"DAS"**) which was in the nature of Portfolio Management Services (hereinafter referred to as "**PMS**"), without seeking SEBI registration under the SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as "**PMS Regulations**") and also conducting fraudulent trade practices such as promising assured returns to its clients, committing fund based activities, by falsifying books of accounts and others records. Further, M/s Teji Mandi Analytics Private Limited (hereinafter referred to as "**TMAPL**"), who was a registered Authorized Person of ASBPL with NSE and its directors Shri Anil Gopal

Gandhi and Ms. Riddhi Kalapi Shah were also found guilty of deleting data of the ASBPL from its email server and thereby aiding and abetting ASBPL for providing the aforesaid DAS services.

2. During the course of the abovementioned proceeding, the WTM was appraised by Ms. Riddhi Kalapi Shah that her husband Mr. Kalapi Shah (hereinafter referred to as **'the Noticee'**) was actively involved with Mr. Anil Gopal Gandhi in managing the affairs of TMAPL. In view of the aforesaid fact, subsequently, the Noticee's role was examined by SEBI based on the documents available on record including the affidavit executed by the Noticee. Accordingly, upon examination, it was prima-facie observed that the Noticee was in charge of and was responsible for the conduct of business of the company i.e. TMAPL during the relevant period. Therefore, the Noticee, being one of the person in charge of TMAPL during the relevant period and also being one of the persons responsible for the conduct of its business, it was alleged that he has violated the **PMS Regulations**, Section 12 (1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), Rule 8 (3) (f) of the Securities Contract (Regulations) Rules, 1957 (**SCR Rules**) and other rules and regulations under the SEBI Act read with Section 27(1) of the SEBI Act.

3. Accordingly, a Show Cause Notice dated July 15, 2024 (hereinafter referred to as the "**SCN**"), was issued to the Noticee calling upon him to show cause as to why suitable directions including direction of refund of fees/monies collected from the investors should not be issued against the Noticee under Sections 11(1), 11(4), 11B(1) and 11(D) of the SEBI Act and read with Section 12A of Securities Contracts (Regulation) Act, 1956 ("**SCRA**"), should not be issued against the Noticee for the aforesaid alleged violations.

4. The aforesaid SCN was issued to the Noticee through SPAD, at the last known address of the Noticee, as well as via email dated July 15, 2024. Subsequently, the SCN issued through SPAD returned undelivered, while the SCN issued through e-mail was duly delivered and was acknowledged by the Noticee, vide e-mail dated August 02, 2024. Thereafter, vide e-mail dated August 06, 2024, the Noticee had sought for inspection of documents, which was granted on August 16, 2024.Thereafter, the Noticee had filed

for settlement proceedings with SEBI vide its application dated October 10, 2024 and also filed his reply in the matter, vide letter dated October 21, 2024. However, the said application could not be considered by SEBI as it was not filed within the limitation period provided under Regulation 4(1) of the SEBI (Settlement Proceedings) Regulations, 2018. The said intimation was communicated to the Noticee vide SEBI's letter dated December 09, 2024. Consequently, an opportunity of personal hearing was granted to the Noticee on February 14, 2025, which was adjourned to March 05, 2025, on the request of the authorized representative (AR) of the Noticee. Finally, the Noticee vide e-mail dated March 04, 2025 submitted a compilation of documents.

5. On the day of the scheduled hearing, the Authorised Representative (hereinafter referred to as "**AR**"), appeared on behalf of the Noticee and reiterated the submissions made vide the reply dated October 21, 2024, explained the compilation of documents and sought for time of one week to make additional submissions in the matter, which was granted. Subsequently, vide e-mail dated March 13, 2025, the Noticee made his additional submissions. Accordingly, the personal hearing in the matter was concluded. The summary of the Noticee's reply dated October 21, 2024, are as under;

- The Noticee was not aware of the wrong doings at ASBPL until the scam was unearthed that his wife's funds were siphoned off along with the funds of the wife's relative.
- SEBI needs to protect the interest of the investors by taking action against the actual persons who are responsible for the fraud committed by ASBPL, rather than proceedings against victims of fraud like the Noticee.
- The Noticee volunteers to refrain himself from accessing the securities market in India for any period of time that SEBI directs.
- Even an AP like TMAPL was not aware that ASBPL did not have a license to engage in PMS. However, NSE and its KMPs were aware of the various illegalities done by ASBPL.
- TMAPL has never received any funds or shares to be manage portfolio of any of its clients or for any alleged assured returns.

- TMAPL never aided and abetted ASBPL and the SCN is also silent on the Noticee "knowingly" aiding and abetting the alleged violations. All of his relatives had opened trading accounts with ASBPL, had the Noticee any knowledge of the same, he would not have advised his relatives to with draw their funds and shares to avert any loss to the tune of hundreds of crores.
- The entire proceeding is based on the findings of NSE's Forensic Audit Report dated October 05, 2020. But since NSE is not an independent party in the matter, therefore, reliance on its FAR would not give SEBI the holistic picture.
- Mr. Gandhi had a sole proprietorship named Tejimandi.com which was into investment advisory and research analysis since 1997-1998. Mr. Kariya of ASBPL was a client of Tejimandi since 1998. Further, Mr. Gandhi had an experience of over 25 years in Fund management and made all the decisions with respect to TMAPL himself. It was under his assurance of handling all the affairs that the Noticee got his wife to agree to be a namesake director in TMAPL. TMAPL was always under the control of Mr. Gandhi and the Noticee managed the back-end operations (i.e. communicating to clients what was instructed by Mr. Gandhi) of TMAPL only under his instructions. Also, Mr. Kariya represented that ASBPL had all the requisite licenses from the regulatory bodies. Therefore, the Noticee had no reason to doubt ASBPL.
- There were no schemes or specific agreement between the clients introduced by TMAPL and the funds and securities were directly transferred from the clients to ASBPL. No fund/securities were received by TMAPL.
- The Noticee submitted that at the time of introduction of clients, the account opening forms were submitted and cheques were drawn towards margin in favour of Anugrah which were merely submitted by TMAPL to ASBPL as coordinators and similarly, once the account was opened by ASBPL relevant details were shared with the clients by TMAPL only as coordinators. Further, as and when the trading took place at ASBPL, the statements and conformations as provided by ASBPL on its servers were downloaded and forwarded to the clients. Also, all the issues and concerns of the clients were always forwarded to ASBPL to resolve. ASBPL provided a terminal at the

premises of TMAPL only to facilitate the trade of clients which was handled on by Mr. Gandhi.

- It only in August 2020 when NSE issued a circular which disabled the derivative trading of ASBPL that the Noticee became aware about the unauthorized trades and unauthorized investment advisory services provided by ASBPL.
- Mr. Gandhi also filed a complaint with SEBI and EOW against Anugrah, copies of which have been provided.
- SEBI has not provided any supporting documents in the SCN to show that either the Noticee or TMAPL has aided and abetted ASBPL in providing the PMS services therefore violation of regulation 3 of the PMS Regulations is not maintainable against them.
- The charge of deletion of data/emails from the server has not been brought out or explained in the SCN. Further, since the Noticee did not have access to the computer system/ computer/ laptop or Mr. Gandhi or ASBPL, the allegation of deletion of data/emails cannot be pinned on him. Thus the charge of the Noticee being responsible for the same vide Section 27(1) of the SEBI Act, will fail.
- As regards the Rule 8 (3) (f) of the SCR Rules, the Noticee stated that it is applicable only to a member of an exchange, which is neither the Noticee nor TMAPL, therefore, imposition of monetary penalty under Section 23H of the SCRA is not possible. He further submitted that the WTM vide order dated February 28, 2023, has imposed monetary penalty under Section 23H of the SCRA only upon ASBPL, its directors and its sister company and not on TMAPL or Mr. Gandhi. Also, the charge of violation of SCR Rules has not been made against Mr. Gandhi in the said order.
- Thereafter, the Noticee stated that the SCN is silent on how TMAPL has "dealt in securities" in violation of Section 12(1) of the SEBI Act. In this regard, the Noticee goes on to submit that the actual charge of offering PMS services is only on ASBPL, while TMAPL was charged for aiding and abetting solely based on two purported emails sent by TMAPL to clients, one allegedly with a presentation of options advisory and the other with a performance report.

The Noticee also stated that he denies having any knowledge of these e-mails and further goes on state that these e-mails in no manner show that TMAPL or the Noticee "bought, sold or dealt in securities" in any manner without registration. Since the neither 2020 SCN nor the WTM order dated Feb 28, 2023, contains any allegations of TMAPL or the Noticee ever dealing in securities themselves, the allegation of Section 12 (1) of the SEBI Act, cannot sustain.

- The Noticee also submitted that he cannot be held liable for the actions of TMAPL without evidence to show that he had involvement or knowledge of these events. As far the affidavit is concerned, the Noticee submits that the said affidavit was executed for the purpose of clarifying that it was him who was associated with TMAPL and his wife had been named a director in his stead. Additionally, the Noticee also had clarified that he was only in charge of the back-office operations under the guidance and instructions of Mr. Gandhi. Thus, in the absence of the above, the Noticee cannot be held liable for the actions of TMAPL under Section 27(1) of the SEBI Act.
- With regard to the above submissions of the Noticee, he has also relied upon the following case laws;
    - i. Agritech Hatcheries & Food Ltd. Vs Valuable Steels India Pvt. Ltd.
    - ii. Smt. G. Vijayalakshmi & Ors Vs. SEBI
    - iii. Sunil Bharati Mittal Vs. Central Bureau of Investigation & ors,
    - iv. Sayanti Sen Vs. SEBI
- Finally vide letter dated February 10, 2024, the Noticee has also questioned the appointment of the QJA in the matter and has sought for the rationale behind the same.

6. Thereafter, the Noticee vide his reply dated March 04, 2025 (compilation of documents) and March 12, 2025 (additional submission), submitted the following;

    - That without prejudice to his submissions pertaining to his role in the affairs of TMAPL, the Noticee is voluntarily willing to undertake debarment from the securities market for a period of three years, if the Ld. QJA finds that he has violated any provisions of the SEBI Act or Regulations thereunder.

- He admits to the execution of the Affidavit and confirms the contents of the Affidavit,
- As clarified during the hearing, his wife was not in-charge of the day to day affairs of TMAPL but Mr. Anil Gandhi was and it was under his instructions that the Noticee carried out his activities in TMAPL.
- as the Noticee was never arraigned in any of the SEBI proceedings earlier, there was no occasion for the Noticee to place on record all the relevant facts which it needs for initiation of appropriate proceedings,
- Next the Noticee has submitted that SEBI must undertake a detailed investigation into the role of important bodies like NSE, CDSL, Edelweiss, who were allegedly negligent of the irregularities committed by ASBPL based on the allegations and compilation of documents submitted on the same.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have considered the material available on record including the complaint, the SCN, the reply, etc., and note that the following issue arises for consideration: -

What was Noticee's role in TMAPL and whether the acts of the Noticee as imputed in the SCN, have resulted in the violation of the provisions of Rule 8 (3) (f) of SCR Rules, Section 12(1) of the SEBI Act and Regulation 3 of the PMS Regulations, while aiding and abetting ASBPL in providing DAS in the nature of PMS, promising assured returns?

8. Before proceeding further, it is pertinent to refer to the relevant provisions of the SCR Rules, SEBI Act and the PMS Regulations alleged to have been violated by the Noticee, as per the SCN. The relevant provisions of law are reproduced hereunder: -

SEBI Act

Section 12 (1) - Registration of stock brokers, sub-brokers, share transfer agents, etc.

" 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:"

SCR Rules

Qualifications for membership of a recognised stock exchange.

*"**8.** The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:*

......

*(**3**) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—*

......

*(**f**) he engages either as principal or employee in any business other than that of securities 13[or commodity derivatives] except as a broker or agent not involving any personal financial liability, provided that—*

(i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

(ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

14[(iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institutions referred to in items (a) to (n)15 of the proviso to sub-rule (4).]"

PMS Regulation

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

Provided that a merchant banker acting as a portfolio manager immediately before commencement of the Securities and Exchange Board of India (Portfolio Managers) (Second Amendment) Regulations, 2006 may continue to do so for a period of six months from such commencement or, if he has made an application for registration under these regulations within the said period of six months, till the disposal of such application."

9. First, I would like to address the issue of appointment of the QJA as raised by the Noticee. In this regard, it is pertinent to note that the Parliament in its wisdom in terms of Section 19 of the SEBI Act, 1992, has empowered the Board/SEBI to delegate its powers and functions by general or special Order in writing, to any member, officer of the Board or any other person. Accordingly, in exercise of the said powers, SEBI can delegate its statutory, financial powers and functions to such members or officers of the Board as specified in the Securities and Exchange Board of India (Delegation of Statutory and Financial Powers) Order, 2019 (hereinafter referred to as "Delegation of Powers Order"). The Board/SEBI has since long, already delegated its quasi–judicial functions to individual whole–time members of the Board/SEBI vide the aforesaid Delegation of Powers Order.

10. I note that vide an amendment made to the Delegation of Powers Order with effect from July 25, 2022, the quasi-judicial functions of the Board under sections 11 (1), 11 (4), 11 (4A) 11D or any regulations framed by SEBI (where no interim, confirmatory or revocation order is envisaged in the matter) has been delegated to the officials of the Board/SEBI holding the office of Chief General Managers (CGMs) and Executive Directors (EDs) of the Board/SEBI. The said Delegation of Powers Order is also available on the website of SEBI. Further, it is pertinent to note that it is judicially settled position that when a statute has express provision for delegation, any delegation that is made in exercise of such powers is wholly within the jurisdiction. The Parliament under Section 19 of the SEBI Act has provided that the Board/ SEBI (established under section 3 of the SEBI Act) can also delegate such powers and functions inter alia to an Officer of the Board.

11. The Hon'ble Supreme Court in **Sahni Silk Mills (P) Ltd v. E.S.I. Corporation [1994 SCC (5) 346]** in the context of delegation of powers observed as under: "5. *The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many staFtutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim delegatus non potest delegare is not being applied specially when there is question of exercise of administrative discretionary power.*

   6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power."

12. It is also pertinent to note the observations of the Hon'ble Supreme Court in **The Barium Chemicals Ltd. and Anr. v. The Company Law Board And Ors. [1967 AIR SC 295.]**: "*Bearing in mind that the maxim delegatus non protest delegate sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication.*"

13. Furthermore, I note that the Hon'ble Supreme Court in **Hitendra Vishnu Thakur v. State of Maharashtra & Ors. [(1994) 4 SCC 602]** has, inter alia, observed that the law relating to forum is procedural in nature and that every litigant has a vested right in substantive law but no such right exists in procedural law. I, therefore, note that SEBI is empowered under Section 19 of the SEBI Act, 1992, to delegate such of its powers and functions to its 'Officer' which is an express category or class of persons mentioned under Section 19 itself and hence, when delegation has been made strictly in terms of Section 19 of the SEBI Act,1992, the preliminary objection of the Noticee to the exercise of powers and initiation of proceedings by a QJA in respect of the Noticee under Sections 11 (4) and 11B of the SEBI Act, 1992, in the instant case is not maintainable.

14. Having said that, I now proceed to consider the matter on merits.

15. As stated in the preceding paras, I note that the present matter actually emanated from the aforesaid WTM order. In this regard, I note that pursuant to the said order dated February 28, 2023, SEBI, in order to examine the role of the Noticee in the present matter based on the materials produced during the aforesaid WTM proceedings, issued a summon under Section 11(3) read with Section 11(2)(i) and 11(2) (ia) of the SEBI Act, 1992 to the Noticee on July 28, 2023, requesting him to appear before SEBI along with specified documents, indicating his role in managing the day to day affairs of TMAPL.

16. The Noticee, vide email dated August 16, 2023, submitted his response to the summons. Following are the major submissions as observed during SEBI's examination:

16.1. He had filed substitution application before WTM in the original proceedings initiated under Section 11 of the SEBI Act, 1992 against various entities including his wife - Ms.Riddhi Kalapi Shah, with a plea to substitute his name instead of his wife's name.

16.2. He has shared his PAN (ASAPS3736M) and Passport No. (657764250) and stated that he is a resident/citizen of United States of America.

16.3. He did not hold any specific designation in TMAPL and was handling all the back office work at TMAPL and was one of the 5 employees of TMAPL.

16.4. He was in charge of collating the documents and information for onward submission to ASBPL.

16.5. He had long association with Mr. Anil Gopal Gandhi since 2005.

16.6. Since he was not an Indian National, he could not be made a director in TMAPL and on suggestion of Mr. Anil Gopal Gandhi, his wife, Ms. Riddhi Kalapi Shah was made the director of TMAPL in his place, as a namesake director for filling in for Shri. Kalapi Shah. He was a deemed director in TMAPL.

16.7. All forms, authorization letters and Board Resolutions were signed by the Noticee and Shri. Anil Gopal Gandhi and later on informed to Ms. Riddhi Kalapi Shah.

16.8. Banking transactions of TMAPL were operated and taken care of by the Noticee and Shri. Anil Gopal Gandhi. An enabling authorization was obtained from Riddhi Kalapi Shah (in her capacity as a Director) through which he became one of the signatories.

16.9. The Noticee did not hold any shares in TMAPL but his wife Ms. Riddhi Kalapi Shah, was the Director of TMAPL and also held shares in TMAPL.

16.10. The Noticee received remuneration of Rs.3 lakh which was deposited in the account of Ms. Riddhi Kalapi Shah as he did not have any bank account in India. He was also given a car by TMAPL.

16.11. The Noticee was authorized by way of Board Resolution for banking transactions of TMAPL and used to get emails of banking transactions.

16.12. The Noticee also confirmed that he has executed the affidavit dated August 19, 2020, submitted by / on behalf of Ms. Riddhi Kalapi Shah to SEBI, during the course of proceedings against her.

17. Further, after taking into consideration the aforesaid submission of the Noticee to the summon, I note that the examination prima facie observed that though the Noticee was not holding any directorship in TMAPL, it was observed from the submissions made by/on behalf of Ms. Riddhi Kalapi Shah that the Noticee along with Anil Gopal Gandhi was responsible for the day to day affairs of TMAPL. Further, the examination observed that an affidavit dated August 19, 2020 was also submitted in this regard executed by the Noticee reiterating his role in managing the affairs of TMAPL. Based on the aforesaid facts, examination prima facie observed that the Noticee was in charge of and responsible to TMAPL for the conduct of its business. Accordingly, the examination found him responsible and guilty of contraventions committed by TMAPL in terms of Section 27(1) of the SEBI Act. Based on the above, it was alleged that the Noticee had violated Rule 8(3)(f) of SCRR and Section 12(1) of SEBI Act read with Regulation 3 of the PMS Regulations

18. I note that, the Noticee has contended that he cannot be held liable under Section 27(1) of the SEBI Act for the actions of TMAPL without evidence to show that he had involvement or knowledge of these events and that the affidavit was executed for the purpose of clarifying that it was him who was associated with TMAPL and not his wife. The Noticee further stated that he was not aware of the wrong doings at ASBPL until the scam was unearthed and that he was only in charge of the back office (i.e. communicating to clients what was instructed by Mr. Gandhi). In this regard, I note that the examination of the above submission of the Noticee as well as the materials made available during the aforesaid WTM proceeding reveals that it was the Noticee, the husband of Ms. Riddhi Kalapi Shah, along with Anil Gopal Gandhi, who were instrumental in managing the affairs of TMAPL. In other words, Ms. Riddhi Kalapi Shah was only a 'namesake director' and was 'filling-in' for her husband. Further, I note that the affidavit dated August 19, 2020 submitted in this effect also reiterate his role in managing the affairs of TMAPL and also reaffirmed his responsibility for the conduct of TMAPL's business. Besides above, I also note that while performing the role of a Director on behalf of his wife, the Noticee, even signed the Board resolutions, sent e-mail communications to clients which consisted of PPTs as a part of DAS service, canvassed clients and promised assured returns, etc., upon the instructions of Mr. Anil Gopal Gandhi, thereby playing a major role in TMAPL.

19. Hence, considering the above said facts, I note that the role of the Noticee in the present matter, was that of a "deemed director". A deemed director is a person who, though not formally appointed as a director, acts as such they are directly involved in the company's affairs. Where the Board of Directors or any one or more Directors of the company are accustomed to act as per the directions or instructions of a person, the person wielding authority behind the scene often in a clandestine manner is a deemed Director and hence would be an officer under the Act. Further, a "deemed director" or "shadow director" is a person who doesn't formally hold the office of director but exerts significant influence over the company's management, effectively directing the board. While a deemed director is not required to comply with the formal duties of a director (like filing consent or declaring interests), they are still responsible as an officer in default under the deeming provisions of the act.

20. In light of the above, as admitted in the present matter by the Noticee, he was actively involved in the day-to-day affairs of the Company during the relevant period when TMAPL was involved in the fraudulent activities, violating various provisions of SEBI Act/Rules/Regulations/Circulars. The position of a 'deemed director' in a company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled or face the consequences for any violation or default thereof. Hence, the Noticee cannot assume the role in TMAPL in a casual manner and cannot therefore wriggle out from liability by merely stating that he was not involved in the affairs of the Company or was not aware of the wrong doings at ASBPL until the scam was unearthed and also not aware that ASBPL did not have a license to engage in PMS.

21. Further, it is a settled issue that TMAPL was found guilty for aiding and abating ASBPL in providing DAS in the nature of PMS thereby promising assured returns to the clients of ASBPL. Hence, TMAPL being a company which is an artificial juristic person and an inanimate legal entity cannot act by itself and it can act only through its individual directors, who are expected to discharge their responsibilities on behalf of the company with utmost care, skill and diligence. In this regard, I would like to refer to the provisions of section 27 of the SEBI Act, 1992 while attributing the contraventions committed by a company to the role played by the Directors of such a company which are placed below:

" Contravention by companies 27 (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained provided in this in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the

contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Explanation: For the purposes of this section, —(a) "company" means anybody corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm. "

22. Accordingly, it is observed that the purpose of Section 27 is to ensure that individuals responsible for the company's actions are held accountable for any violations of the SEBI Act. More particularly, even if a company, through its manager, violates a regulation related to insider trading, the manager, along with the company, can be held liable under Section 27. SEBI can issue orders, including restraining access to the capital market, initiating prosecution, and imposing penalties, as outlined in the Securities and Exchange Board of India Act, 1992. In this case, I note from the material available on record, that the Noticee himself has admitted to his involvement in TMAPL through his submissions mentioned above and further, the above mentioned clause (1) of Section 27 of SEBI Act provides for deeming liability of every person who "*was in charge of and was responsible to the company for the conduct of the business of the company*". Therefore, according to Section 27, every person who, at the time the offense was committed, was in charge of, and responsible to, the company for the conduct of the business of the company, is deemed guilty of the offense and liable, which includes directors, managers, secretaries, and other officers.

23. In this context, I rely on the Supreme Court order in **Sham & Ors Vs. State of Haryana** (1989) 4 SCC 630, wherein it was stated that for shifting the burden on the accused, it is first necessary to establish that the person was responsible for carrying on the business and was during the relevant time in charge of the business otherwise it would be a "*travesty of justice*" if sleeping partners such as minors, ladies and others who do not participate in the business are prosecuted.... Since sub-clause (1) does not use the term "Director" and therefore for fasting of liability what is required the person at the relevant time was in charge of and responsible to the company for conduct of its business, as in the case of the Noticee who, although was an employee of the company,

was in charge of the day-to-day activities of TMAPL and responsible for its functioning as admitted in his affidavit. The Noticee also executed functions that of a Director in the company and signed, all forms, authorization letters and board resolutions etc., which only a director can do, as observed from his reply dated August 16, 2023. Further, vide the said reply, the Noticee also admitted to having received remuneration of Rs.3 lakhs from TMAPL which was deposited in the bank account of his wife. Further, I note that the Noticee has stated that the said affidavit was executed only for the purpose of clarifying that it was him who was associated with TMAPL and his wife had been named a director in his stead. In this regard, I note that considering, affidavits are used in legal matters to affirm the truth and accuracy of specific information, making them essential, I feel by submitting the said document, the Noticee has effectively admitted to his actions and responsibilities towards TMAPL. Therefore, I do not accept the Noticee's submission that he was only in charge of the back office or that he was not aware of the wrong doings at ASBPL until the scam was unearthed and find that as per Section 27 of the SEBI Act, he is responsible for the actions of TMAPL.

24. Moving on to examining the contention of the Noticee that TMAPL has never aided and abetted ASBPL, I note that the said charges of TMAPL and its director i.e. Mr. Anil Gopal Gandhi aiding and abetting ASBPL has already been established/proved in the aforesaid WTM proceeding. Further, the findings in this regard were also detailed while stating that ASBPL directly as well as through its associated entities was engaged in an activity under the name and style of DAS in derivative segments and was indulging in promising/providing assured returns to its clients, which is not a permitted activity to be carried out as a stock broker. Further, the DAS was pitched/offered to potential clients of ASBPL as an investment service under two plans, i.e. Gold and Platinum, requiring a minimum investment amount of INR 10 Lakh and INR 1 Crore, respectively. The investment options provided under both these plans (that a client could avail) were to be availed by the clients, either by investing the entire amount by cheque or 60% in cheque and remaining 40% via stocks. If one goes for the latter option, then the stocks would be subject to a haircut of 50% of value of shares. Additionally, under the Gold plan, there was no restriction on withdrawal, whereas Platinum plan had a lock-in period of one year with assured return of minimum 12% per annum. In this regard, during the relevant period the PPT related to DAS had also been sent by the employees of ASBPL,

who were close to the directors of TMAPL, through the official email address of the ASBPL's director to increasing the customer base of TMAPL. Furthermore, even though the clients opened their trading accounts with ASBPL, it was stated that the trading activity in the said accounts were operated/ managed/controlled by TMAPL.

25. Besides that, some complaints were also received by NSE against TMAPL in the month of March 2020 wherein one of the complainants shared 2 emails, one containing a presentation on "Options Advisory Services" as a product and the other containing various attachments including the performance report, consolidated bills, etc. However, during a review of the email data pertaining to the email ID tejimandi@anugrahsb.com., collected from the laptop of TMAPL, these two specific emails sent to the clients of ASBPL were not found present in the said data, suggesting that by that time, the TMAPL had already deleted the clients' data of the ASBPL, including these two emails, from his mail data on the email server of ASBPL. It is therefore, in the aforesaid WTM proceeding, without any doubts, it was concluded that the TMAPL and its directors have aided and abated the ASBPL in engaging in providing DAS in the nature of PMS promising assured returns. Hence, the submission of the Noticee do not have any merit.

26. The Noticee vide his reply dated October 21, 2024 *inter alia* stated that TMAPL has never received any funds or shares to manage the portfolio of any of its clients or for any alleged assured returns. Then, he stated that Mr. Gandhi having over 25 years of experience in Fund management, single handedly managed and made all the decisions with respect to TMAPL himself. It was under his assurance of handling all the affairs that the Noticee got his wife to agree to be a namesake director in TMAPL. TMAPL was always under the control of Mr. Gandhi and the Noticee managed the back-end operations (i.e. communicating to clients what was instructed by Mr. Gandhi) of TMAPL only under his instructions.

27. In respect of the above submission of the Noticee, I note that in the present matter, as admitted and established above, the Noticee is one of the deemed directors of TMAPL, who was in charge and responsible for the day to day affairs of the Company during the relevant period when ASBPL was involved in the fraudulent activities, violating various provisions of SEBI Act/Rules/Regulations/Circulars. Hence, while carrying out

his duty as a deemed director, he should have exercised necessary due diligence. There is also nothing on record to show that he has taken necessary steps to prevent the wrongdoings of TMAPL or has dissociated from the activities of TMAPL. Therefore, I note that the Noticee cannot escape from his duties as a director by pleading ignorance of the fraudulent activities of TMAPL. In view of this, I am not in a position to accept his submissions.

28. As regards the Noticee's contention that the charge of Rule 8(3)(f) of the SCR Rules, is applicable only to a member of an exchange, therefore, imposition of monetary penalty under Section 23H of the SCRA is not possible on him, I note that it is already an established fact in the aforementioned WTM order that ASBPL, its directors and sister concern were engaged in providing Derivative Advisory Services, thereby violating Rule 8(3)(f) of the SCR Rules. It is also pertinent to mention that ASBPL is the broker and a member of the stock exchange while TMAPL is an agent of ASBPL and registered with the stock exchange. Further, this is also an established fact that TMAPL aided and abetted ASBPL in carrying out the aforesaid PMS activities and accordingly are liable under Rule 8(3)(f) of the SCR Rules. Therefore, I find no merit in the said contention of the Noticee.

29. As regards the Noticee's contention that the SCN is silent on how TMAPL has "dealt in securities" in violation of Section 12(1) of the SEBI Act and its submission that the actual charge of offering PMS services is only on ASBPL, while TMAPL was charged for aiding and abetting solely based on two purported emails sent by TMAPL to clients, one allegedly with a presentation of options advisory and the other with a performance report. In this regard, I note that it is imperative that any person carrying out DAS has to necessarily obtain registration from SEBI and conduct their activities in accordance with the provisions of the SEBI Act and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

> *"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:"

30. I note that for seeking a certificate of registration for doing DAS, an entity is required to satisfy, inter alia, the following requirements, as provided under the PMS Regulations:

    (1) An application by a person for the grant of a certificate shall be made to the Board in Form A of Schedule I and shall be accompanied by a non-refundable application fee, as specified in para(1) of Schedule II.

    (2) Notwithstanding anything contained in sub-regulation (1), any application made by a person prior to coming into force of these regulations containing such particulars or as near thereto as mentioned in Form A of Schedule I shall be treated as an application made in pursuance of sub-regulation (1) and dealt with accordingly.

31. Further, the PMS Regulations provides for the minimum professional qualification, basic experience of 5 years in the securities market and prescribes mandatory net-worth requirement. Further, it inter-alia provides for disclosures of any conflict of interest, risk profiling of clients, maintenance of records related to client assessments and the suitability of advice. The prescriptions in the PMS Regulations are intended to safeguard the interest of investors and curb the perpetration of unregistered entities entering the field of investment advisory services and indulging in unscrupulous market practices.

32. I further note that Regulation 3 of the PMS Regulations, states that no person shall act as a portfolio manager unless it has obtained a certificate of registration from the Board under these regulations. In this regard, I also note from the WTM order dated February 28, 2023 that it is an admitted fact that ASBPL and its' director, Mr. Paresh Kariya indeed sent PPT on DAS to their potential clients. Next, I note that being the AP of ASBPL, the clients' accounts of ASBPL were operated/managed/controlled by TMAPL. Therefore, it was concluded that the act of providing DAS services was indeed being carried out by ASBPL. Then, I note that the WTM found that Rs.165.10 Crores were

received in the Books of accounts of ASBPL and its sister concern i.e. Om Sri Sai Investments. Thereafter, I note that the FAR has observed that some complaints were received by NSE against TMAPL in the month of March 2020 wherein one of the complainants shared 2 emails, one containing a presentation on "Options Advisory Services" as a product and the other containing various attachments including the performance report, consolidated bills, etc. However, during a review of the email data pertaining to the email ID tejimandi@anugrahsb.com, collected from the laptop of the TMAPL, these two specific emails sent to the clients of ASBPL were not found present in the said data, suggesting that by that time, TMAPL, had already deleted the clients' data of the ASBPL, including these two emails, from his mail data on the email server of ASBPL. Therefore, the allegation that TMAPL has aided and abated the Noticee no. 1 in engaging in providing DAS in the nature of PMS promising assured returns, was established by WTM.

33. In view of the above and reading the provisions of Section 12(1) of SEBI Act, 1992 with Regulation 3 of the PMS Regulations and Section 27 of the SEBI Act, it is noted that neither ASBPL nor TMAPL were not registered with SEBI in the capacity of Portfolio Manager during the period under examination. It is further noted that ASBPL received amounts to the tune of Rs.165.10 Crores in its bank account.

34. I note that as an AP, TMAPL is required to facilitate trade execution on behalf of client's using the broker's platform, ensure all trades are in compliance of SEBI rules and regulation, maintain transparency etc. The AP also cannot guarantee returns on investments or engage in any fraudulent or misleading activities, which has been established against TMAPL vide WTM's order dated February 28, 2023. In view of the above, based on the documents available on records, including the affidavit executed by the Noticee, I find that being one of the persons who was in charge of TMAPL, was responsible for the conduct of business of TMAPL. As such, as per the provision of Section 27(1) of the SEBI Act, 1992, he shall be deemed to be guilty of the contravention committed by TMAPL. Thus, I do not agree with the submission of the Noticee that SEBI has not provided any supporting documents in the SCN to show that either the Noticee or TMAPL has aided and abetted ASBPL in providing the PMS

services and therefore violation of regulation 3 of the PMS Regulations is not maintainable against them. Accordingly, I find that the Noticee has violated the provisions of Section 12(1) of the SEBI Act read with Regulation 3 of the PMS Regulations.

35. Further, as regards the Noticee's additional submissions dated March 04 & 12, 2025, I note that the Noticee's submissions to investigate the role of NSE, CDSL, Edelweiss, etc., made vide his replies dated March 04 and 12 of 2025, are in the nature of compliant(s), the Noticee has the liberty to pursue the matter through the appropriate forum / designated grievance redressal mechanism.

36. Given the vital functions of protecting investors and safeguarding the integrity of the securities market vested in SEBI and the commensurate powers given to it under the securities laws, it is necessary that SEBI exercise these powers firmly and effectively to insulate the market and its investors from the deceitful activities of the participants in the securities market, thereby fulfilling its legal mandate. Having found that the Noticee aided and abetted ASBPL in providing DAS in the nature of PMS, promising assured returns, I find that the aforesaid Noticee is liable for action.

DIRECTIONS

37. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4), 11B(1) and 19 of the SEBI Act, and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, do hereby issue the following direction:

    (a) The Noticee is restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of **5 years** from the date of this order.

38. For any non-compliance of this order, the Noticee shall be subject to strict action under the applicable provisions of the law, including prosecution.

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

40. A copy of this order shall be sent to the Noticee, all the recognized Stock Exchanges, the relevant Banks, Depositories and Registrar, Transfer Agents, BSE Administration and Supervision Ltd., to ensure that the directions given above are strictly complied with.

G RAMAR

Date: April 15, 2025

Place: Mumbai

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA