

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2024-25/31350**

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of
Bestway Smart Financial Private Limited
(PAN: AAKCB2828G / SEBI Registration Number: INA000017392)

In the matter of Bestway Smart Financial Private Limited

A. BRIEF BACKGROUND

1. An inspection of Bestway Smart Financial Private Limited (hereinafter also referred to as "BSFPL/ Noticee/ IA/ Investment Adviser") was caused by Securities and Exchange Board of India ("SEBI") through BSE Administration and Supervision Limited (hereinafter also referred to as 'BASL') for the period April 1, 2022 – August 31, 2023 ("Inspection Period"). Thereafter, BASL submitted its Inspection report to SEBI along with its comments vis-a-vis reply of the IA. Pursuant to the inspection, SEBI had initiated Adjudication Proceedings under Section 15-I of the SEBI Act, 1992 (hereinafter also referred as 'SEBI Act') in respect of the Noticee in the subject matter for the alleged violation of Regulation 19 of SEBI (Investment Advisers) Regulations, 2013 (hereinafter also referred to as "SEBI IA Regulations, 2013" / "SEBI IA Regulations").

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violation by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 of SEBI Act, 1992 read with Section 15 I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

(hereinafter also referred as “Adjudication Rules”), the Competent Authority appointed the undersigned as Adjudicating Officer (“AO”) vide order dated September 24, 2024 to inquire into and adjudicate under Section 15EB of the SEBI Act, 1992 the alleged violation by the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated September 26, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice No. SEBI/EAD5/P/OW/2024/31989/1-2 dated October 11, 2024 (hereinafter also referred to as ‘SCN’ / ‘SCN dated October 11, 2024’ in short) was issued to Noticee under Rule 4 of SEBI Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against it and why penalty be not imposed under Section 15EB of SEBI Act, 1992 for the aforesaid alleged violation. The SCN was duly served upon the Noticee through Digitally Signed Email dated October 11, 2024 and Speed Post Acknowledgment Due (SPAD).
4. In this regard, following was inter alia observed and alleged in respect of the Noticee:

“ ...

4.1. *IA has failed to maintain call recording of the clients on-boarded during the inspection period.*

4.1.1. *It was observed that as per clients detail submitted by IA, it has on-boarded 1723 clients during inspection period, out of which 751 clients were unique clients but IA could only provide 40 calls record, which were only payment confirmation call. Therefore, SEBI observed that IA has failed to maintain calls record of the clients on-boarded during the inspection period.*

4.1.2. *In this regard Noticee in its findings to the inspection stated that “We have already provided all call recordings and data at the time of inspection which was dated 5th September 2023 at Indore office, we were maintaining the call recordings of the clients after the SEBI onsite visit, later on we encountered a technical issue due to which we are unable to find all recordings, but from now we will maintain each clients’ recording.”*

4.1.3. *In this regard, BASL in its remarks responded to SEBI that “As per Regulation 19 of SEBI (Investment Advisers) Regulations, 2013 IA has to maintain all clients records pertaining to Investment advice either in physical or electronic form and it has to be preserved for a minimum period of five years.*

Due to not maintaining proper data and not having proper backup system, IA has violated Regulation 19 of SEBI (Investment Advisers) Regulations, 2013.”

4.1.4. *In this regard SEBI observed that IA was unable to provide all call recordings during on-site inspection. Thus, it was observed by SEBI that IA did not maintain call recordings as required under SEBI IA Regulations, 2013. Thus, IA has violated Regulation 19 of SEBI (Investment Advisers) Regulations, 2013.*

In view thereof, it is alleged that Noticee has violated Regulation 19 of SEBI (Investment Advisers)

“ ...”

5. Vide letter dated October 23, 2024, the Noticee submitted its reply to the SCN.

Key submissions of the Noticee as reply to the SCN are as under:

“ ...”

I am writing in response to the Show Cause Notice dated October 11, 2024 issued by the Enquiries and Adjudication Department of SEBI. I acknowledge receipt of the notice and appreciate the opportunity to present my response to the allegations raised therein.

The Show Cause Notice raises concerns regarding certain actions that SEBI believes may constitute non-compliance with the applicable regulations. I wish to respectfully address these concerns as follows:

Observation- IA has failed to maintain call recording of the clients on-boarded during the inspection period

Response-

We would like to clarify that our Investment Advisory entity has always strived to comply with SEBI regulations and has ensured transparent and ethical conduct of our operations. In this regard, we respectfully submit the following points in response to the observation raised:

1. Submission of Call Recordings and Data During Inspection

We wish to highlight that, during the SEBI onsite inspection dated 5th September 2023 at our Indore office, we had duly provided the call recordings and relevant data pertaining to the clients on-boarded during the inspection period. The same is not refuted by the inspection team in its report. This submission included the information that was available and maintained at the time of the inspection, and no deficiency in the maintenance of such records was raised during the visit.

Technical Issue Post-Inspection

After the SEBI inspection, we encountered a technical issue in our systems that resulted in the corruption of call recordings, making them inaccessible. This was an unforeseen and unfortunate technical malfunction. Despite our best efforts to retrieve these recordings, we were unable to recover the data due to this issue. We wish to emphasize that the technical problem arose after the inspection period, and we undertake to take steps to ensure that such incidents do not occur again in the future.

3. Client Onboarding and Advice Process

We would like to clarify the steps involved in our client onboarding and advice process, which is fully transparent and documented:

o Post-payment processing, the client's onboarding process is completed through our website, which includes the signing of the Client Agreement, completion of KYC (Know Your Client), and Risk Profiling procedures.

o Once the onboarding process is successfully completed, any financial advice or recommendations are communicated to clients through SMS.

o Importantly, we do not provide any advice or recommendations over the phone. As such, the role of phone conversations is purely for procedural or customer service purposes, and not for the transmission of financial advice.

4. Compliance Measures

We have always taken steps to ensure compliance with all applicable regulations, including maintaining call recordings where relevant. However, as per our practice, financial advice is communicated through written means (SMS), ensuring transparency, traceability, and client protection. Since no advice or recommendations are given over the phone, all the advisory related communication is still under our records.

Corrective Actions Taken

Recognizing the concerns raised in the Show Cause Notice, we have taken immediate corrective action to prevent any technical issues in the future that could impact our data storage and retrieval systems. Moving forward, we are implementing enhanced IT safeguards to ensure that all call recordings and client interactions are properly maintained and archived in compliance with SEBI guidelines.

Conclusion and Request

In light of the above, we respectfully request SEBI to consider this response and close the proceedings initiated through the SCN, as the observation arose due to an inadvertent technical issue that has now been addressed, and the nature of our business does not involve providing financial advice over phone calls.

We remain committed to complying with all SEBI regulations and will continue to uphold the highest standards of transparency and client service.

We are available for any further clarifications or explanations if required and look forward to your favorable consideration.

We sincerely regret any inconvenience this may have caused and respectfully request that the matter be considered resolved in light of the corrective actions taken.

We are ready and willing to cooperate further if SEBI requires any additional information or clarification. Please do not hesitate to contact us at 91 8517972101 or info@bestwaysamrtfinancial.com if you have any further questions or if there are any specific documents or evidence you require.

Thank you for your attention to this matter, and we look forward to a fair and just resolution.

...

6. Having regard to the principles of natural justice, vide Hearing Notice dated October 28, 2024, an opportunity of personal hearing was provided to the Noticee on November 27, 2024.
7. Vide email dated November 26, 2024, the hearing in the matter was rescheduled to November 29, 2024 on account of administrative exigency.
8. On the rescheduled date of hearing viz., November 29, 2024, the Noticee appeared through its Authorised Representatives (ARs) viz. Manoj Jethanand Varyani (Director of Noticee) and Mr. Vikas Soni (Director of Noticee), for the hearing held through online mode viz., video conferencing. During the hearing, the ARs of the Noticee relied upon and reiterated the submissions made by Noticee vide letter dated October 23, 2024. Further, the ARs inter alia submitted that there were no further/additional submissions to be made and the submissions made vide letter dated October 23, 2024 be taken as final and complete submissions in the matter.

D. CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are as following:

- | | |
|-----------------------|--|
| Issue No. I: | Whether the Noticee has violated the provisions of SEBI IA Regulations, 2013, as alleged? |
| Issue No. II: | If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15EB of SEBI Act, 1992? |
| Issue No. III: | If yes, what should be the monetary penalty that can be imposed upon the Noticee? |

Issue No. I: Whether the Noticee has violated the provisions of SEBI Regulation, as alleged?

IA had failed to maintain call recording of the clients on-boarded during the inspection period.

10. In this regard, it was inter alia observed and alleged that Noticee had failed to maintain call recordings of the clients on-boarded during the inspection period. Therefore, it was alleged that the Noticee had violated Regulation 19 of SEBI (Investment Advisers) Regulations, 2013.

10.1. In this regard, SEBI inter alia observed that as per client's detail submitted by IA, it had on-boarded 1723 clients during inspection period, out of which 751 clients were unique clients but Noticee could only provide 40 calls record, which were only payment confirmation call.

10.2. I note that Noticee's reply to the findings of the inspection as well as reply to the SCN during the instant proceedings in this regard are in nature of admission save for being differently worded in so far as Noticee in its reply to the SCN has submitted that *"... we encountered a technical issue in our systems that resulted in the corruption of call recordings, making them inaccessible. This was an unforeseen and unfortunate technical malfunction. Despite our best efforts to retrieve these recordings, we were unable to recover the data due to this issue. We wish to emphasize that the technical problem arose after the inspection period, and we undertake to take steps to ensure that such incidents do not occur again in the future..."*

10.3. In this regard I note that Noticee has further submitted that *"... We wish to highlight that, during the SEBI onsite inspection dated 5th September 2023 at our Indore office, we had duly provided the call recordings and relevant data pertaining to the clients on-boarded during the inspection period..."*

In this regard I note from material available on record that Noticee has neither denied nor disputed that it had on-boarded 1723 clients during inspection period, out of which 751 clients were unique clients. In this regard I also note from material available on record that Noticee could only provide 40 calls record during the inspection and all the 40 call recordings were only related to confirmation regarding receipt of payment by the Noticee from the said 40 clients for the services of the Noticee.

10.4. I also note from material available on record that at the time of onsite inspection on being asked by BSE about back-up data for calls recording for the inspection period, it was informed by Noticee that server had crashed after the inspection and they did not have any back-up of the data. In this regard, as regards the back-up of the data, I note the following from material available on record:

- Despite being a director of the company and head of the operation, Mr. Vikas Soni, and the IT officer were not sure about on which hard disc they had stored back-up data.
- When the hard disc was found then it was password protected and the password was not known to anyone to unlock the hard disc.

In this regard, I note from the material available on record that a copy of inspection report was shared with the Noticee as part of the SCN inter alia containing the above, which the Noticee has neither denied nor disputed and instead the submissions of the Noticee are silent in this regard.

10.5. In this regard, I note that Regulation 19 of SEBI (Investment Advisers) Regulations, 2013 reads as under:

“ ...

Maintenance of records.

... ”

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

... ”

I further note that SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 reads as under:

“ ...

Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013 provides that IA shall maintain records with respect to his activities as an investment adviser. In this regard, it is clarified that:

... ”

a. *IA shall maintain records of interactions ,with all clients including prospective clients(prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:*

... ”

ii. *Telephone recording,*

... ”

10.6. In view of the above, I note that as per Regulation 19 of SEBI (Investment Advisers) Regulations, 2013, the Noticee was required to maintain and preserve telephone recordings for a minimum period of five years. In this regard, I note that the period of inspection was April 1, 2022 – August 31, 2023 and the Noticee had not maintained and preserved the telephone recordings for a period of five years.

10.7. In view thereof, I find that the allegation that the Noticee had failed to maintain call recordings of the clients on-boarded during the inspection period, stands established. Therefore, I hold that the Noticee had violated Regulation 19 of SEBI (Investment Advisers) Regulations, 2013.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15EB of SEBI Act, 1992?

11. As it has been established in the foregoing paragraphs that Noticee had violated Regulation 19 of SEBI (Investment Advisers) Regulations, 2013, the Noticee is liable for payment of a monetary penalty in terms of Section 15EB of SEBI Act, 1992.

12. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia held that:

“ ... In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established ”

13. Therefore, for the above violation, as brought out in the foregoing paragraphs, I find that the Noticee is liable for monetary penalty under Section 15EB of the SEBI Act, 1992, which reads as under:

“ ...
SEBI Act, 1992

Penalty for default in case of investment adviser and research analyst.

15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to 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.]

“ ... ”
(Note: for detailed/ complete text of the provisions, relevant Acts etc., may please be referred.)

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

14. While determining the quantum of penalty, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

SEBI Act, 1992

“

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

15J. While adjudging quantum of penalty under 15- 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.

“ ... ”

15. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to an investor or group of investors as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violation committed by the Noticee are repetitive in nature. However, I note that the Noticee being a SEBI registered Investment Adviser was required to comply with the applicable provisions of securities laws, which it had failed to comply with, as dealt with and brought out in the foregoing and which SEBI is duty bound to enforce compliance of. Such non-compliance accordingly needs to be dealt with suitable penalty.

E. ORDER

16. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose penalty of Rs. 1,00,000/- (Rs. One Lakh Only) under Section 15EB of SEBI Act, 1992. In my view, the said penalty will be commensurate with the violation committed by the Noticee in this case.

17. The Noticee shall remit /pay the said amount of penalty within 45 days of receipt of this order 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 AO -> PAY NOW

18. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

19. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

PLACE: MUMBAI
DATE: March 28, 2025

AMAR NAVLANI
ADJUDICATING OFFICER