

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Name of the Noticee	SEBI Registration No.
Aditya Birla Money Limited	INZ000172636

In the matter of EOW Investigations

Background:

1. The present proceedings originate from the investigation conducted by the Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), pursuant to two news articles dated January 08, 2014, *inter alia*, alleging the dematerialization and selling of shares in dormant accounts using forged documents by certain entities during the period from September 14, 2009 till March 08, 2013 (hereinafter referred to as '**Investigation Period**'). SEBI's investigation revealed that shares of 14 listed companies were allegedly acquired in the name of 26 bogus and non-existing entities through transfer of allegedly stolen or counterfeit physical shares and the said shares were subsequently dematerialized in the accounts of these 26 bogus entities.
2. It was observed during the course of investigation that Aditya Birla Money Limited (hereinafter referred to as the "**the noticee/ ABML**"), a registered stock broker and a member of BSE Limited (hereinafter referred to as '**BSE**') and National Stock Exchange of India Limited (hereinafter referred to as '**NSE**'), had allegedly failed to exercise due skill, care, diligence, professionalism and efficiency in the conduct of its business, in relation to the dealings of one of its clients, viz. Mr. Abhay Dattatray

Javlekar (hereinafter referred to as “**Mr. Abhay/ Client**”). It was observed during the investigation that the noticee had:

- a) failed to exercise due skill, care, diligence, professionalism and efficiency by not verifying the email ID and mobile number of Mr. Abhay; and
- b) failed to report the dealings of Mr. Abhay, which were not commensurate with his annual income, as declared in the Know Your Customer form (hereinafter referred to as “**KYC**”) to the Financial Intelligence Unit (hereinafter referred to as the “**FIU**”).

3. In view of the above, it was alleged that the noticee had violated the provisions of Clause A(2) of Code of Conduct as specified in Schedule II read with regulation 9(f) of the Securities and Exchange Board of India (Stock-Brokers) Regulations, 1992 (hereinafter referred to as the “**Broker Regulations**”).
4. Pursuant to conclusion of the investigation, SEBI appointed a Designated Authority (hereinafter referred to as ‘**the DA**’) to inquire into and to submit a report pertaining to the probable violation of Clause A(2) of Code of Conduct as specified in Schedule II read with regulation 9(f) of the Broker Regulations.
5. The DA, after conducting the enquiry, as specified under regulation 25 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the ‘**Intermediaries Regulations**’), submitted the Enquiry Report dated July 29, 2022 (hereinafter referred to as the “**Report**”). In the said Report, the DA has observed that the *first* allegation that the noticee failed to exercise due skill, care, diligence, professionalism and efficiency on account of not verifying the email ID and the phone number furnished by its client, i.e., Mr. Abhay does not stand established.
6. As regards the *second* allegation i.e., non-reporting of ‘*suspicious transactions*’ to FIU by the noticee, the DA has observed that the noticee, as per paras 8, 9 and 2.2 of the guidelines of the SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18, 2006, read with para 4 sub-clause (c) of Suspicious Transactions Report Guidelines mentioned under para 6 of SEBI Circular ISD/CIR/RR/AML/2/06

dated March 20, 2006 and para 10 and para 13 of SEBI Master Circular CIR/ISD/AML/3/2010 dated December 31, 2010 (hereinafter referred to as “**SEBI PML Circulars**”), was under an obligation to report certain transactions of Mr. Abhay to FIU, which it failed to do. The DA has observed that by not adhering to the SEBI PML Circulars, the noticee failed to exercise due care and diligence, professionalism in the conduct of its business. Accordingly, the DA recommended that the Certificate of Registration of the noticee (bearing no. INZ000172636), as a broker, may be suspended for a period of three months. The relevant excerpt of the Report is produced hereunder:

“In view of the violations as established, facts and circumstances of the case, I find that the instant enquiry proceedings initiated vide the SCN dated October 05, 2018 against the Noticee viz. Aditya Birla Money Limited is a fit case for recommending punitive action in the form of suspension under Regulation 26(1)(iii) of the Intermediaries Regulations read with Regulation 27(xv) of the Broker Regulations and Section 12(3) of the SEBI Act, 1992. Therefore, in terms of Regulation 26(1)(iii) of the Intermediaries Regulations, I recommend that the registration of the Noticee, i.e., Aditya Birla Money Limited [registration No. INZ000172636] as a broker be suspended for a period of three months”

7. Pursuant to submission of the Report, a Post Enquiry Show Cause notice dated October 6, 2022 (hereinafter referred to as the “**SCN**”) enclosing a copy of the Report therewith was issued to the noticee to show cause as to why the action, as recommended by the DA, including other appropriate directions, if any, in terms of regulation 27 of the Intermediaries Regulations should not be taken/ issued against the noticee.
8. The noticee, vide its letter dated November 2, 2022 filed its reply to the SCN and requested for an opportunity of personal hearing, which was granted to the noticee on January 17, 2023, through video conferencing.

9. On the scheduled date of hearing, Mr. Somasekhar Sundaresan, Advocate, Authorized Representative, along-with Mr. Pradeep Sharma, Chief Financial Officer and Mr. Muralikrishnan, Head, Legal and Compliance of the noticee, appeared through video conferencing and made oral submissions in the matter. As requested, the noticee was provided with 10 days' time to file post hearing submissions in the matter, which it filed vide letter dated February 1, 2023.
10. The submissions made by the noticee in its reply / written submissions dated November 2, 2022, February 1, 2023 and the oral submissions made during the course of personal hearing are summarized hereunder:
- i. The SCN has been issued after an unexplained delay of more than 8 years despite the fact that the documents, basis which, the charges have been levelled against the noticee, have been at SEBI's disposal since 2014. It is a settled principle that the power to adjudicate has to be exercised within a reasonable period of time and the delay with which the notice has been issued to the noticee is gravely prejudicial to the noticee and the SCN is vitiated on the grounds of delay and laches. In this regard, reference is placed on the decision of Hon'ble Securities Appellate Tribunal in the matters of *Ashok Shivlal Rupani and another Vs. SEBI*¹ and *Rakesh Kathotia and others Vs. SEBI* and decision of the Hon'ble Supreme Court in the matters of *Adjudicating Officer, SEBI Vs. Bhavesh Pabari*² and *SEBI Vs. Sunil Khaitan*³;
 - ii. The conjecture of the DA that transactions by Mr. Abhay were to be reported to FIU is unfounded as the said transactions did not fall under the definition of 'suspicious transactions', as defined under the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 (hereinafter referred to as "**PML Rules**");

¹ Appeal No. 417 of 2018, dated May 27, 2019

² (2019) 5 SCC 90

³ 2022 SCC Online SC 862

- iii. The DA has failed to appreciate that no contemporaneous circumstances existed which could have arisen suspicion in any reasonable person's mind, basis which, the noticee ought to have reported the transactions to FIU. Further, no transactions have been brought on record to demonstrate as to how the Noticee ought to have formed an opinion or a reasonable ground that the transactions were suspicious in nature;
- iv. The DA has failed to appreciate that the PML Circulars did not require the noticee to monitor/ report transactions on the basis of disproportionate income/ net-worth of the client and such measures were introduced by the exchanges only in 2021;
- v. The concept of income and wealth are interrelated. A person may be wealthy enough and have no income outside the deployment of their wealth and thus, to simply look at income figures and ignore wealth to conclude that a person could not be trading without arousing suspicions is an arbitrary conclusion;
- vi. While the declared income of Mr. Abhay was ₹5-10 lakhs, the declared holding of the securities was worth ₹40.10 lakhs. Further, Mr. Abhay had also transferred ₹39 lakhs to another broker, proving thereby that Mr. Abhay was objectively a man of means. Thus, it is totally erroneous to conclude that the trading activities of Mr. Abhay ought to have aroused suspicion;
- vii. The noticee carries out its operations diligently and has filed multiple STRs during the relevant period and the DA has failed to appreciate that the recommendation made is not commensurate with the facts and circumstances of matter and is disproportionate to the alleged violation;
- viii. The SEBI PML Circulars relied upon by the DA to allege that the noticee failed to report the suspicious transactions of Mr. Abhay to the FIU were not a part of the show cause notice dated October 5, 2018 issued by the DA and have only been spelt out/ elaborated in the Enquiry Report. Further, the said SEBI PML Circulars were not provided to the noticee during the course of inspection and thus, the noticee was never provided an opportunity to deal with the relevant charge prior to the issuance of the Enquiry Report;
- ix. The DA has failed to specify the exact provision under which intermediaries/ brokers were required to monitor/report transactions of clients vis-à-vis the income and ignore the holdings;

- x. At the relevant point in time, there were no contemporaneous circumstances which could have given a reasonable ground of suspicion to the noticee. The trades of Mr. Abhay were not made in any known unusual circumstances and it could not have been said that there was no economic rationale. The noticee had no reason to suspect the transactions as:
 - a) No transactions were effected in any illiquid securities;
 - b) There were no abnormal transactions or substantial increase in transaction value;
 - c) There was no sudden trading activity;
 - d) Orders were received from Mr. Abhay only.
- xi. None of the illustrative circumstances as mentioned in the para 10.2 of the SEBI Master Circular were prevalent at the relevant time and no document has been brought on record to suggest the existence of such circumstances;
- xii. Para 13.2(b) of the SEBI Master Circular requires that reasons are to be recorded for treating transactions as suspicious and at the relevant time, there were no contemporaneous circumstances which could have given rise to a ground that the said transactions were suspicious in nature;
- xiii. Other than making a blanket statement that the noticee ought to have reported transactions of Mr. Abhay on account of the same not being commensurate with the income levels, no other evidence has been brought on record to substantiate as to how the same ought to have given the noticee grounds for suspicion;
- xiv. SEBI PML Circulars did not require the intermediaries/ brokers to monitor trades of clients purely on the basis of the income. Further, as per Clause 9.2 of the SEBI Master Circular, the intermediaries/ brokers may specify the internal threshold limits for each class of client accounts and pay attention to the transactions which breach such limits. The said internal thresholds were put in place by the noticee and the transactions of Mr. Abhay did not breach such internal limits;
- xv. As per Clause 13.3 of the SEBI Master Circular, a transaction has to be reported by the intermediary/ broker, regardless of the internal threshold if the intermediary/ broker has a reason to believe that the said transaction involves proceeds of crime. However, in the present matter, the noticee had no reason to believe that the transactions of Mr. Abhay involved proceeds of crime;

- xvi. In addition to the SEBI PML Circulars, the noticee is also compliant with the surveillance processes prescribed by the exchanges from time to time and it was only in July 2021 when National Stock Exchange of India Limited, vide its circular dated July 1, 2021, introduced monitoring of transactions on disproportionate trading activity vis-à-vis income. In absence of any regulatory requirement, it cannot be alleged that the noticee has not exercised due skill and care in the operation of its business;
- xvii. Mr. Abhay's trades did not raise suspicion as:
- a) Mr. Abhay got registered as a client in 2010 and at that point of time there was no reason for the noticee to believe that a fraud might be committed by Mr. Abhay and it was only after a thorough investigation that even SEBI was able to identify the fraud;
 - b) Mr. Abhay's declared annual income was ₹5-10 lakhs and he was already holding shares worth ₹40.10 lakhs;
 - c) Mr. Abhay's bank statement provided to the noticee at the time of opening of account evidence that Mr. Abhay had paid ₹39 lakhs to another broker;
 - d) the noticee was receiving funds from registered bank account of Mr. Abhay and not from a third party and thus, the noticee had no reason to suspect the bonafide of Mr. Abhay;
 - e) Mr. Abhay received securities through off-market transactions from identifiable demat accounts registered with other brokers;
 - f) The transactions of Mr. Abhay did not appear to be abnormal/ suspicious considering financial capabilities of Mr. Abhay;
- xviii. The DA has wrongly documented that the annual income of Mr. Abhay was ₹5 lakhs as the same been documented has 5-10 lakhs in the KYC documentation;
- xix. The specific transactions basis which allegations have been levelled in the Enquiry Report pertain to sale transactions of shares held in demat form of Mr. Abhay. Such shares were credited in the account of Mr. Abhay through off market transactions and the same were subsequently sold on May 21, 2012. At the time when such shares were credited/ sold, no complaints/ issues were raised by any person;

- xx. Sale of shares already held by the client could not have by itself led to suspicion in the mind of the noticee which would prompt it to file STR with FIU;
- xxi. The noticee had mechanisms in place to identify suspicious transactions and had accordingly filed 39 STRs during 2010-11 to 2013-14;
- xxii. SEBI conducted investigation in the matter only after appearance of news articles and even though SEBI/ exchanges have access to information in respect of transactions and income levels of clients, no alerts were raised by SEBI/ exchanges and action was taken only after an intensive investigation in the matter. Thus, in absence of any contemporaneous circumstances, a charge of lack of due diligence cannot be brought against the noticee;
- xxiii. In various inspections conducted against the noticee, the charge of non-compliance of SEBI PML Circulars has not been brought up and thus, it is apparent that the present charge has been brought up solely on the basis of hindsight;
- xxiv. The Hon'ble Supreme Court in the matter of *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others*⁴ has held that due diligence cannot be measured by any absolute standard and due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person. Further, reliance is also placed on the decision of Hon'ble SAT in the matter of *SMC Global Securities Limited*, dated November 25, 2011 and *Almonds Global Securities Limited* to submit that each and every market intermediary cannot start the business with a suspicion in mind that a fraud is in the offing unless some facts exist on the face of the record. The test of due diligence is whether the noticee did everything reasonable and in light of the fact that the noticee had put in place system to monitor and report suspicious transactions, it cannot be alleged that the noticee failed to exercise due care and diligence as regard the two transactions of one clients over a period of 4 years which in any event did not generate any alert;
- xxv. The DA has not taken into account that the present proceedings against the noticee arise out of a larger investigation into the alleged fraudulent

⁴ (2008) 7 SCC 169

- dematerialization of shares by non-existing/ bogus entities and the noticee was neither aware, nor a party to such fraud;
- xxvi. There is no connection between the noticee and Mr. Abhay apart from client and broker;
- xxvii. Fraud prevention and detection is ever evolving and the noticee has always made attempts to establish best practices over and above what has been prescribed, to ensure greater scrutiny. The Hon'ble Supreme Court in the matter of **SEBI Vs. Rakhi Trading Private Limited**⁵ has observed that as market grows, ingenious means of manipulation are employed;
- xxviii. The DA has failed to consider and appreciate the consequences of the recommendation on not just the noticee but also noticee's clients and other stakeholders, including its shareholders;
- xxix. No reasons have been provided by the DA as to why the recommendation of suspension for a period of 3 months is the appropriate recommendation and in absence of any reasoning, the DA ought to have dropped the charges against the noticee;
- xxx. The DA has placed reliance on the decision of the Hon'ble SAT in the matter of **Marwadi Shares and Finance Limited Vs. SEBI**⁶ (hereinafter referred to as "**Marwadi case**") but the said matter is distinguishable on facts as the transactions therein were repeated self-trades and had no economic rationale. Further, in the Marwadi case, the penalty involved was ₹5 Lakhs whereas the recommendation in the present matter is suspension of three months;

Consideration of Issues and Findings:

11. Having carefully examined the material available on record viz. the Enquiry Report, the SCN, the reply, written and the oral submissions put forth during the course of personal hearing, the allegations against the noticee can be categorized under two heads. The *first* allegation is that the noticee failed to exercise due skill, care, diligence, professionalism and efficiency by not verifying the email ID of Mr. Abhay and by obtaining the confirmation about dealings of Mr. Abhay from a

⁵ (2018) 13 SCC 753

⁶ Appeal No. 85 of 2011

third party contact number. The *second* allegation is that the noticee failed to exercise due diligence in reporting certain transactions of Mr. Abhay which were not commensurate with his declared annual income, to FIU.

12. As regards the *first* allegation, the DA in the report has observed that the aforesaid allegation does not stand established against the noticee. The noticee had submitted before the DA that it duly followed all the relevant procedure/ guidelines and there is no finding in the show cause notice issued by the DA that the noticee failed to meet mandatory requirements prescribed by SEBI while account opening of Mr. Abhay. Further, there was no legal provision which required the noticee to investigate an email ID, provided willingly by the client of the noticee, and even by sending an email, as stated in the notice issued by DA, the noticee could not have verified the email ID. The noticee has also submitted that it has always made confirmation calls only to the registered mobile number of Mr. Abhay and there is nothing on record to suggest otherwise. I find merit in the submission of the noticee and note that the noticee was sharing the trade details only on the email ID provided by its client and that it has sought client confirmation as regards the transactions undertaken, only on the registered mobile number. Further, as observed by the DA, in-person verification of Mr. Abhay was duly done by the noticee and none of the circulars issued by SEBI required the noticee to verify the email IDs and mobile numbers provided by the clients by way of any specific process. Considering the above, I agree with the observations of the DA that the noticee did not fail to exercise due skill, care, diligence, professionalism and efficiency in verifying the email ID of the Mr. Abhay.

13. With respect to the *second* allegation of non-reporting of '*suspicious transactions*', after taking into consideration the contents of the SCN and the written and oral submissions made by the noticee, the issues that arise for my consideration are as under:

- a) Whether the transactions of Mr. Abhay fall within the purview of the term '*suspicious transactions*' as defined under rule 2(1)(g) of the PML Rules?

- b) Whether the noticee has violated the SEBI PML Circulars by not reporting the suspicious transactions to FIU?
- c) Whether the noticee has violated Clause A(2) of the Code of Conduct as specified in Schedule II read with regulation 9(f) of the Broker Regulations?

14. Before dealing with the issues at hand, I deem apposite to refer to the relevant provisions of law alleged to have been violated in the matter, extracts whereof are reproduced below:

“SEBI (Stock Brokers) Regulations, 1992:

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

...

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

SCHEDULE II

**Securities and Exchange Board of India (Stock Brokers) Regulations,
1992**

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

(1) ...

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

Rule 2(1)(g) of the PML Rules

(g) "Suspicious transaction" means a transaction referred to in clause (h), including an attempted transaction, whether or not made in cash, which to a person acting in good faith-

(a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or

(b) appears to be made in circumstances of unusual or unjustified complexity; or

(c) appears to have no economic rationale or bona fide purpose; or

(d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;

Explanation. - Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism

A. SEBI Master Circular dated December 31, 2010

10. Suspicious Transaction Monitoring & Reporting

10.1 Intermediaries shall ensure that appropriate steps are taken to enable suspicious transactions to be recognized and have appropriate procedures for reporting suspicious transactions. While determining suspicious transactions, intermediaries shall be guided by the definition of a suspicious transaction contained in PML Rules as amended from time to time.

10.2 A list of circumstances which may be in the nature of suspicious transactions is given below. This list is only illustrative and whether a particular transaction is suspicious or not will depend upon the background, details of the transactions and other facts and circumstances:

a) Clients whose identity verification seems difficult or clients that appear not to cooperate

b) Asset management services for clients where the source of the funds is not clear or not in keeping with clients apparent standing /business activity;

c) Clients based in high risk jurisdictions;

d) Substantial increases in business without apparent cause;

e) Clients transferring large sums of money to or from overseas locations with instructions for payment in cash;

f) Attempted transfer of investment proceeds to apparently unrelated third parties;

g) Unusual transactions by CSCs and businesses undertaken by offshore banks/financial services, businesses reported to be in the nature of export- import of small items.

10.3 Any suspicious transaction shall be immediately notified to the Money Laundering Control Officer or any other designated officer within the intermediary. The notification may be done in the form of a detailed report with specific reference to the clients, transactions and the nature /reason of suspicion. However, it shall be ensured that there is continuity in dealing with the client as normal until told otherwise and the client shall not be told of the report/suspicion. In exceptional circumstances, consent may not be given to continue to operate the account, and transactions may be suspended, in one or more jurisdictions concerned in the transaction, or other action taken. The Principal Officer/Money Laundering Control Officer and other appropriate compliance, risk management and related staff members shall have timely access to client identification data and CDD information, transaction records and other relevant information.

13. Reporting to Financial Intelligence Unit-India

13.1 In terms of the PML Rules, intermediaries are required to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND) at the following address:

**Director, FIU-IND,
Financial Intelligence Unit-India,
6th Floor, Hotel Samrat, Chanakyapuri,
New Delhi-110021.**

Website: <http://fiuindia.gov.in>

13.2 Intermediaries shall carefully go through all the reporting requirements and formats enclosed with this circular. These requirements and formats are divided into two parts- Manual Formats and Electronic Formats. Details of these formats are given in the documents (Cash Transaction Report- version 1.0 and Suspicious Transactions Report version 1.0) which are also enclosed with this circular. These documents contain detailed directives on the compilation and manner/procedure of submission of the manual/electronic

reports to FIU-IND. The related hardware and technical requirement for preparing reports in manual/electronic format, the related data files and data structures thereof are also detailed in these documents. Intermediaries, which are not in a position to immediately file electronic reports, may file manual reports with FIU-IND as per the formats prescribed. While detailed instructions for filing all types of reports are given in the instructions part of the related formats, intermediaries shall adhere to the following:

(a) The Cash Transaction Report (CTR) (wherever applicable) for each month shall be submitted to FIU-IND by 15th of the succeeding month.

(b) The Suspicious Transaction Report (STR) shall be submitted within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transactions integrally connected are of suspicious nature. The Principal Officer shall record his reasons for treating any transaction or a series of transactions as suspicious. It shall be ensured that there is no undue delay in arriving at such a conclusion.

(c) The Principal Officer will be responsible for timely submission of CTR and STR to FIU-IND;

(d) Utmost confidentiality shall be maintained in filing of CTR and STR to FIU-IND. The reports may be transmitted by speed/registered post/fax at the notified address.

(e) No nil reporting needs to be made to FIU-IND in case there are no cash/suspicious transactions to be reported.

15. The provisions of SEBI Circulars dated January 18, 2006 and March 20, 2006 have not been reproduced above as the provisions relevant to the present proceedings have been appropriately covered in the SEBI Master Circular dated December 31, 2010 which consolidates and supersedes the earlier circulars, including the circulars dated March 20, 2006 and January 18, 2006.

16. I now proceed to examine the issues framed at para 13 above on merits in light of the submissions made by the noticee and other material available on record.

17. The noticee has submitted that it was never given an opportunity of dealing with the alleged violation of the SEBI PML Circulars before the DA as the same was never raised in the SCN issued by the DA or at the time of hearing before the DA. In this

regard, I am of the view that the Post Enquiry SCN issued to the noticee contained all relevant material, including the Enquiry Report, which in turn included the reliance on the SEBI PML Circulars. Further, as noted from the records, the noticee has filed its written submissions on the alleged violations of the SEBI PML Circulars and also made oral submissions in respect of the said alleged violations during the course of personal hearing dated January 17, 2023. Therefore, in my opinion, the noticee has been provided with a just and fair opportunity to present its case and make arguments as regards the reliance upon the SEBI PML Circulars in the present proceedings. Further, I observe from the SCN issued by the DA that even though the SEBI PML Circulars have not been specifically mentioned by the DA, the SCN issued by the DA contains the allegation that the noticee has failed to report certain transactions to FIU and/ or other authorities. Accordingly, I find that the submission of the noticee in this regard is devoid of merit.

18. The issues that need to be addressed first in the present proceedings are whether the transactions executed by client of the noticee, i.e., Mr. Abhay would fall within the purview of the term '*suspicious transactions*', and if the same is answered in affirmative, whether the noticee defaulted by not reporting the said transactions to FIU. In order to examine the impugned transactions, on the aforesaid criteria for judging whether a transaction is a suspicious transaction, it is necessary to reproduce the impugned transactions along with relevant observations of the DA are reproduced as under:

“26. I note from Javlekar’s KYC form of that his declared annual income was less than 5 lakhs. I further note from the details of off market dealings of Javlekar annexed to the Investigation Report that the shares of Global Securities Ltd. were credited to Javlekar’s demat account, on the following dates:

Date	Transferor Name	Quantity of shares
20/04/2012	INDRA BAHADURRAJMADI MISHRA	43,300
24/04/2012	KESAVAN MENON	2000

27. Further, Javlekar had sold the aforesaid shares of Global Securities Ltd. on a single day and turnover generated by the aforesaid sale was greater than his declared annual income of as per the KYC forms, as illustrated hereunder:-

Trade Date	Quantity of shares	Value of shares (₹)
21/05/2012	43,300	8,83,320
21/05/2012	2000	40,800

Thus, I note from the foregoing that Javlekar's trading turnover on a single day, i.e., on May 21, 2015, was far greater than his declared annual income in his KYC. Therefore, I note that Javlekar's daily trading turnover was not commensurate with his declared Annual Income. I also note from the records that the Noticee had not reported the trading activity of Javlekar to the Financial Intelligence Unit (FIU)."

The DA has further observed in para 32 of the Enquiry Report that "...the declared annual income of Javlekar was less than 5 lakhs. As noted earlier in order, Javlekar had traded for a value in excess of Rs 9 lakhs on a single day, which was not commensurate with his declared annual income. I also note from Noticee's submissions that Javlekar had invested Rs. 80,23,316 on various date and had also taken a pay-out of Rs. 6,67,080, which clearly shows that the value of his trades far exceeded his declared annual income. Therefore, I find that since Javlekar's daily trading turnover was not commensurate with his declared annual income, the said transactions give rise to a reasonable suspicion that Javlekar may not be trading with a bona fide purpose and he may be acting as a front/conduit for somebody else, and therefore Javlekar's aforesaid transactions amounted to suspicious transactions in terms of the SEBI PML Circulars and PML Rules".

19. Relying on the aforesaid discussion, the DA in para 32 of the Enquiry Report has observed that "...Therefore, I find that, as per the SEBI PML Circulars, the reporting obligation is triggered at the very threshold of suspicion and does not require any conclusive proof of an illegal transaction and the Noticee should have reported

Javlekar's trading activity as required under the SEBI PML Circulars. However, Noticee admittedly failed to do so. Thus, I find no merit in the contention of the Noticee that it was not under any legal obligation to report the trading activity of the Client to FIU-IND."

20. On perusal of the aforesaid observations of the DA, it is noted that the noticee is alleged to have not reported two transactions entered into by Mr. Abhay on May 21, 2012, where the trading turnover of Mr. Abhay was allegedly not commensurate with his annual income, to FIU. It is observed from the Report that for these two transactions on May 12, 2012, the trading turnover of Mr. Abhay is alleged to be not commensurate with his annual income, as declared in the KYC records and this alone, as observed by the DA, should have alerted the noticee that the transactions entered into by Mr. Abhay may not have a bonafide purpose and, therefore, amounted to *suspicious transactions*. In addition to the said two instances, the DA has also relied upon the submissions of the noticee to note that Mr. Abhay invested around ₹80.23 lakhs on various dates and had also taken a pay out of around ₹6.67 lakhs to reach the conclusion that the transactions of Mr. Abhay were not commensurate with his annual income which was less than ₹5 lakhs and thus, the noticee should have reported the same to the FIU. The impugned transactions are as under:

Trade Date	Quantity of shares	Value of shares (₹)
21/05/2012	43,300	8,83,320
21/05/2012	2000	40,800

21. On a perusal of the above table, it is observed that two transactions of Mr. Abhay are under consideration in the extant proceedings which the noticee allegedly failed to report to the FIU. The findings against the noticee in the Report, that the aforesaid transactions were suspicious in terms of the PML Rules is based on the fact that the transactions entered into by Mr. Abhay, were not commensurate with his declared annual income and the same should have aroused reasonable suspicion that Mr. Abhay may not be trading with a *bona fide* purpose and might be acting as

a front/ conduit for somebody else. Accordingly, as per the DA, the noticee should have reported the said transactions to FIU, as mandated by the SEBI PML Circulars.

22. On perusal of the Enquiry Report, it is observed that Mr. Abhay received 45,300 shares of Global Securities Limited (hereinafter referred to as “**Global**”) through off-market transactions on April 20, 2012 and the said shares were later sold by Mr. Abhay on May 21, 2012, when shares were worth around ₹9 lakhs. Since the trading turnover generated by the said sale was around ₹9 lakhs, the DA has observed that the same was not commensurate with the annual income of Mr. Abhay, which is stated to be less than ₹5 lakhs by the DA. The noticee has contested the fact about the annual income of Mr. Abhay and has in turn submitted that the same was in the range of ₹5-10 lakhs. I have perused the material available on record and from the *Client Registration Application Form*, it is noted that the annual income of Mr. Abhay was in the range of 5-10 lakhs. In view of the same, I am of the opinion that the transactions executed and the turnover generated by Mr. Abhay (around ₹9 lakhs) have to be seen in light of the annual income of Mr. Abhay, i.e., ₹5-10 lakhs.

23. The noticee in its defence, has argued, that there were no contemporaneous circumstances which could have raised suspicion in a reasonable person's mind, the shares were credited in the demat account of Mr. Abhay through off-market transactions and further, there is nothing in the Report or the SCN issued by the DA to indicate that these transactions involved proceeds of crime/ were made in circumstances of unusual or unjustified complexity/ had no economic rationale or bonafide purpose.

24. At this juncture, I deem it appropriate to discuss the submission of the noticee that the impugned shares were received by Mr. Abhay through off-market transactions. I am of the view that as the said shares were received through off-market transactions, the noticee, as a broker, could not have been involved in the credit of such shares to the account of Mr. Abhay. As regards the two sell transactions executed by Mr. Abhay, I am of the view that since the shares received through the aforesaid off market transactions were sold by Mr. Abhay, a correlation between the

said sell transactions and annual income cannot be reasonably established in absence of other surrounding/ supporting factors. Mr. Abhay could have received the shares through a gift transaction, or otherwise. Since the receipt of these shares did not involve the noticee, the noticee could not have formed any opinion with respect to the legality/ genuineness of the said shares and similarly, for the sell transactions, the noticee had no reason to suspect the source of such shares because the client already had the shares in his demat account. The fact that the shares sold by Mr. Abhay were received by him through off-market transactions, without any involvement of the noticee, has not been taken into account by the DA and I am of the view that the same is a significantly relevant factor in the present proceedings. Since the impugned transactions involved sale of shares received through off-market transactions where the turnover generated was around ₹9 lakhs (within the range of annual income disclosed by the client, i.e., ₹ 5-10 lakhs), it cannot be held that the same fell within the ambit of the term '*suspicious transactions*' and that the noticee was under an obligation to report the said transactions to FIU.

25. Further, apart from the aforesaid two impugned transactions, the DA noted from the submissions of the noticee that Mr. Abhay had started trading in April 2011 and traded predominantly in the equity and derivatives segment of NSE and had invested around ₹80 lakhs on various dates and had also taken a payout of around ₹6.67 lakhs. These transactions, as observed by the DA, were also not commensurate with the annual income of Mr. Abhay and the noticee should have reported the same to FIU. In this regard, I am of the view that the DA has picked the aforesaid details from the submissions of the noticee and the said observation did not form a part of show cause notice issued by the DA. In other words, these transactions were not included in the impugned transactions under examination. I also observe that there is no relevant data/ information available on record to analyze the stated figure of ₹80 lakhs. Further, the DA has also not endeavored to seek further details/ explanation about such transactions from the noticee. The nature and details of the transactions, whether in the equity or derivatives segment, dates on which such transactions were entered into and the number of such transactions are not available on records and thus, it is not possible to take into

account the aforesaid transaction(s) for the purpose of determining if the noticee has failed to report these transactions to FIU as suspicious transactions.

26. At this juncture, I consider it necessary to compare the facts of the present matter with the facts of the Marwadi case (relied upon by the DA) to put things in a better perspective. The Marwadi case, *inter alia*, was in respect of execution of 200 trades, out of which 197 were self-trades. The Hon'ble SAT had therein held that 197 trades is not a small number and self-trades, by their very nature, are fictitious and had accordingly held the noticee therein, liable for non-reporting of suspicious transactions. The number of trades involved in the present matter is comparatively very low (i.e., 2 sell transactions executed in the year 2012). Thus, in my view, facts of the present case are distinguishable from the Marwadi case and accordingly, I don't find it appropriate to place reliance on the same.

27. In light of the aforesaid discussion, I am of the considered view that it would not have been possible to suspect that the sell transactions had been done in circumstances of unusual or unjustified complexity or involved the proceeds of an offence specified in the schedule of Prevention of Money-laundering Act, 2002 or involved financing of the activities relating to terrorism or were not bona fide in nature.

28. Having found that the impugned transactions cannot be labelled as '*suspicious transactions*', I answer the issues framed at Para 13 above in the negative.

29. In view of the same, I disagree with the findings of the DA and hold that the noticee has not violated Clause A(2) of the Code of Conduct as specified in Schedule II read with regulation 9(f) of the Broker Regulations and accordingly, SCN is liable to be disposed of against the noticee without issuance of any directions.

Order

30. I, in exercise of the powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with Regulation 27(5) of the Intermediaries regulations, hereby

dispose of the instant proceedings against the noticee, namely, Aditya Birla Money Limited [Registration No. INZ000172636] without issuance of any directions.

Sd/-

DATE: JULY 18, 2023

PLACE: MUMBAI

**ANAND R. BAIWAR
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA**