

QJA/GG/MIRSD/MIRSD-SEC-4/25826/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF SEBI ACT, 1992 AND REGULATION 27(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

In Respect of:

Sr. No.	Name of the Noticee	Registration Number
1.	Keshav Securities Pvt. Ltd. (PAN: AACCK2279A)	INZ000296230

1. The present matter emanates from a Show Cause Notice dated January 30, 2023 (hereinafter referred to as **“SCN”**) issued by the Securities and Exchange Board of India (hereinafter referred to as **“SEBI”**) to Keshav Securities Pvt. Ltd (hereinafter referred to as **“Noticee”**) under Regulation 27(1) of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as **“Intermediaries Regulations”**) calling upon it to show cause as to why the measures recommended by the Designated Authority (hereinafter referred to as **“DA”**) or any other action as contemplated in the Intermediaries Regulations, should not be taken against it. The SCN enclosed with the Enquiry Report dated January 16, 2023 (hereinafter referred to as **“Enquiry Report”**) of the DA.
2. The Noticee is registered as a Stock Broker under the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as **“Stock Brokers Regulations”**) bearing SEBI Registration No. INZ000296230. I note that SEBI had conducted an inspection for the period April 2020 to September 2021 (hereinafter referred to as **“inspection period”**) of the Noticee. Pursuant to completion of the said inspection, one of the action recommended with respect to the Noticee was to conduct

Enquiry in view violation of Rule 8(1)(f) and Rule 8(3)(f) of the Securities Contract (Regulation) Rules 1957 (hereinafter referred to as “**SCRR, 1957**”).

3. Considering the aforesaid, SEBI appointed a DA under Regulation 24(2) of the Intermediaries Regulations to conduct an enquiry in the matter. The present Order is the result of such enquiry proceeding against the Noticee under Section 12(3) of the SEBI Act, 1992 read with Intermediaries Regulations. A Show Cause Notice No. SEBI/EAD-3/BM/UR/57025/1/2022 dated November 09, 2022, was issued by the DA under the provisions of Regulation 25(1) of the Intermediaries Regulations calling upon the Noticee to show cause as to why appropriate recommendation should not be made against it in terms of Section 12(3) of the SEBI Act read with Regulation 26 of the Intermediaries Regulations for the alleged violations.
4. After considering the reply of the Noticee, the facts and circumstances of the case and material available on record, the DA vide its Enquiry Report, *inter alia*, made the following observations:
 - (i) *“The Noticee has been alleged to have violated Rule 8(1)(f) and Rule 8(3) (f) of the Securities Contract (Regulation) Rules, 1957.*
 - (ii) *The relevant provisions of law are reproduced below:*

Securities Contracts (Regulation) Rules, 1957

8. *The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:*
 - (1) *No person shall be eligible to be elected as a member if—*
 - (f) *he is engaged as principal or employee in any business other than that of securities [or commodity derivatives] except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business:*
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 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,

(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) of sub-rule (8)

(iii) During the course of Inspection, it was alleged that Noticee was engaged in business other than that of securities involving personal financial liability.

(iv) Noticee had given loan amounting to Rs.22,66,55,417.44 to related entities/ outside parties which are not involved in securities business. The details of which is tabulated as below:

Sr. No	A/c Description	Closing Balance as on 30 Sep, 2021
1	BNE Infraprojects Ltd.	15,00,000
2	Modispaces Real Estate Pvt Ltd.	22,51,55,417.44

(v) Noticee submitted that the loan amount of Rs.22.51 crores was given to the group company, Modispaces Real Estate Pvt Ltd is a sister concern company. Loan given to BNE infraprojects is interest free loan given to relatives which has now turned into bad debts. Noticee further submitted that it was not aware that it could not give loans to sister concerns and was a lapse on its' part.

- (vi) *I note that Noticee gave loans of Rs.15,00,000 to BNE infraprojects Ltd on June 20, 2018 and Rs.22,51,55,417.44 to Modispace Real Estates on September 30, 2021. I observe that Modispaces Real Estate Pvt Ltd is a sister concern and BNE infraprojects is a group company and thus both are related entities. The amount extended by the Noticee are thus not part of its broking business. Noticee has expressed his ignorance regarding the law governing the brokering activity. In this regard, I note that statement made by Noticee is not justified. As postulated by legal maxim "ignorantia juris non excusat", ignorance of law is no excuse and everyone is presumed to know the law of the land. A person cannot defend his illegal actions by stating that he was not aware his actions were illegal, even if he honestly believed that they were not breaking the law. Therefore, I do not find any merit in this contention of Noticee. Further, Noticee in its submission has accepted the violations as alleged against it.*
- (vii) *In this regard, Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") has held in the matter of M/s Jitendra Pukhraj Jain v/s SEBI (Appeal No. 390 of 2020) as follows:*
"...we note that Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 imposes restrictions on the members of Exchange from conducting any business other than in securities. Hence the finding in the impugned order that by giving loans to other entities, including employees/family members of the appellant, the appellant has violated the said Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957. We also note that the intention behind the said provision is to prevent negative impact on the balance sheet of a broker and to maintain the safety and integrity of the securities trading eco system."
- (viii) *In view of the above it is concluded that the Noticee violated:*
a. Rule 8 (1) (f) of the Securities Contract (Regulation) Rules, 1957 and
b. Rule 8 (3) (f) of the Securities Contract (Regulation) Rules, 1957."

5. Accordingly, the Enquiry Report has made the following recommendation:

"I observe that the loan given by the Noticee are of 2 instances, one in 2018 and another in September 30, 2021. Further no other such transactions has been brought out by the inspection team. I also note that there are no adverse findings of having any impact on the networth of the Noticee due

to such transactions. In view of the same, in terms of Regulation 26 of SEBI (Intermediaries) Regulations, 2008 it is recommended that the Noticee may be censured.”

The Show Cause Notice, Personal Hearing and Reply of the Noticee

6. The SCN dated January 30, 2023, has been issued to the Noticee under Regulation 27(1) of the Intermediaries Regulations, in respect of enquiry conducted against the Noticee. The SCN was served upon the Noticee through speed post acknowledgement subsequent to which the Noticee filed reply via email dated February 9, 2023. The Noticee was granted an opportunity of personal hearing on February 28, 2023. Mr. Vinit Modi, Director, Keshav Securities P. Ltd., appeared on behalf of the Noticee. The hearing was held via videoconferencing during which Shri Vinit Modi submitted that he will file written submissions within seven days' time. On March 4, 2023, the Noticee filed written submissions in the matter.
7. The Noticee, has made the following submissions vide email dated February 9, 2023, in reply to the SCN:
 - a) *'The loan amount of Rs.22.51 crores is given to the group company. Modispaces Real Estate Pvt Ltd is a sister concern company. Loan given to BNE infraprojects is interest free loan given to relatives which has now turned into bad debts. We have also received a letter dated November 9, 2022 from SEBI regarding this same point. We were not aware that we could not give loans to sister concerns. This is a lapse on our part.'*
8. Post hearing the Noticee vide email on March 04, 2023, made the following submissions:
 - a) *We at M/S Keshav Securities Pvt Ltd. do not have any outside clients. All our clients are family members and relatives.*
 - b) *We have also applied for "Total Surrender" of membership in NSE and BSE in December 2021 and are waiting for their response.*

- c) *We have also stopped trading in all our clients from December 2021.*
- d) *The loan which was given to M/S Modispaces Real Estate Pvt Ltd and M/S BNE Infraprojects Ltd*
 - i. *The loan given to M/S Modispaces Real Estate Pvt Ltd is a sister concern of M/S Keshav Securities Pvt Ltd*
 - ii. *The loan given to M/S BNE Infraprojects Ltd has been considered as bad debt in our records.*
 - iii. *We did not know that we could not give out loans, but NSE has already penalized us for this*
- e) *NSE had also conducted the inspection of our books of accounts for the time period of May 2021. They have already penalized us for the same offence. (attached order) Refer point no 9.4.*

Consideration of submissions and findings

9. I have gone through the SCN, the Enquiry Report, replies of the Noticee and its submissions made before me during the hearing and written submissions filed thereafter. I note that the allegation against the Noticee is that, during the inspection period, the Noticee had on two occasions given loan to: (i) Modispaces Real Estate Pvt. Ltd; (sister concern of the Noticee) and (ii) BNE Infraprojects Ltd. (group company of the Noticee), thus engaged as principal or employee in any business other than that of securities or commodity derivatives, resulting in violation of Rule 8(1)(f) and 8(3)(f) of SCRR, 1957.
10. In this regard, I note that, the Noticee has not denied the allegations stated against it in the SCN. The Noticee submitted that, it was not aware that it could not give loans to sister concerns and it is a lapse on their part. Further, the Noticee has also submitted that all their clients are family members and relatives and that they do not have outside clients and they have stopped trading with their clients from December 2021. Further, that they have applied for 'total surrender' of their membership with NSE and BSE in December 2021 and are awaiting response from stock exchanges. Noticee has also submitted that NSE had conducted inspection of their books of accounts for the period May 2021 and that the Noticee has been already penalized for the referred offence.

11. In this regard, I note that the Noticee vide his reply to the SCN dated February 09, 2023, has *inter alia* submitted the ledger account/particulars of debit and credit transactions with Modispaces Real Estate Pvt. Ltd. I note that the said ledger account does not give the particulars or details for the amounts debited / credited in the account of Modispaces Real Estate Pvt. Ltd., but only states the amounts transferred month wise since April 2015 to January 2023. From the said accounts, I note that from April 2015 to September 30, 2021 (i.e. date of end of inspection period), the amount of money that has been transferred to Modispaces Real Estate Pvt. Ltd. on several occasions, totaled to Rs. 2,89,91,79,652/- and the amount of money received from Modispaces Real Estate Pvt. Ltd. totaled to Rs. 2,84,41,05,550.56. The closing balance as on September 30, 2021 is Rs. 22,51,55,417.44. In this regard, I note that the period of inspection is from April 2020 to September 2021 and from the Ledger account provided by the Noticee, during this period, the Noticee has transferred funds to the amount of Rs. 58,03,58,852/- to Modispaces Real Estate Pvt. Ltd. Hence, I note that the amount of Rs. 22,51,55,417.44 as stated in the Enquiry Report is only the closing balance as on September 30, 2021 and the total amount of loan given by the Noticee to Modispaces Real Estate Pvt. Ltd. during the inspection period is Rs. 58,03,58,852/-. Since, the Noticee has not disputed the closing amount of Rs. 22,51,55,417.44 as loan to Modispaces Real Estate Pvt. Ltd. and has further not provided any details/particulars of the funds transferred as shown in the ledger account, it is assumed that all the funds transferred to Modispaces Real Estate Pvt. Ltd. were given as loans.
12. I note during the hearing held on February 28, 2023, the authorized representative of the Noticee *inter alia* submitted that he will file written submissions of the details regarding the time period when the loans were given to Modispaces Real Estate Pvt. Ltd and BNE Infraprojects Ltd. and also the present status/recovery of the loan amount. In this regard, I note that the Noticee in his written submissions dated March 04, 2023, has only submitted that the loan given to M/S BNE Infraprojects Ltd. has been considered as bad debt in their records. Further, I note that Noticee has not submitted any details with regard to the status of the loan given or

recovered from Modispaces Real Estate Pvt. Ltd. Hence, from the documents available on record, i.e. the reply dated February 09, 2023 itself, I note that the Noticee had provided loans of Rs.58,03,58,852/- to Modispaces Real Estate Pvt. Ltd. during the inspection period and has not submitted any details regarding recovery of these loans given. Further, it is more important to note that the Noticee has only submitted the ledger account details and has not submitted any bank account statements to validate the debit or credit details of Modispaces Real Estate Pvt. Ltd. Hence, the validity of the same is also questionable.

13. I note that the Noticee in its replies has expressed its ignorance regarding the law governing the brokering activity. In this regard, I find that ignorance of law is not an excuse especially for a registered intermediary who is required to know the conditions for registration. The Noticee has been a registered stock broker with SEBI in the equity segment since 2004, hence his contention of being unaware of rules, is untenable. Further, I note that the Noticee was also to submit details of its net worth and its clients during the period of inspection. However, I note that the Noticee has not provided any details of its net worth in its written submissions dated March 04, 2023.
14. In this regard, I find it appropriate to rely upon the Order dated November 17, 2020 of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") in the matter of M/s. Jitendra Pukhraj Jain vs NSE, wherein, it was *inter alia* held that "*we note that Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 imposes restrictions on the members of Exchange from conducting any business other than in securities. Hence the finding in the impugned order that by giving loans to other entities, including employees/family members of the appellant, the appellant has violated the said Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957. We also note that the intention behind the said provision is to prevent negative impact on the balance sheet of a broker and to maintain the safety and integrity of the securities trading eco system.*"
15. In view of the above, I agree with the observations of the Enquiry Report that, during the inspection period the Noticee had given loans to Modispaces Real

Estate Pvt. Ltd, which as discussed in the aforesaid paras, actually amounts to Rs. 58,03,58,852/-. Further, that the Noticee had also given loans of Rs.15.00 lacs to BNE Infraprojects Ltd. and therefore has engaged as principal or employee in any business other than that of securities or commodity derivatives, in violation of Rule 8(1)(f) and 8(3)(f) of the Securities Contract (Regulation) Rules, 1957.

16. In the present case, I note that the Designated Authority, after conducting an enquiry in the matter, has recommended that the Noticee may be censured. In this regard, as discussed in detail above, I note that the amount of loan provided by the Noticee to Modispaces Real Estate Pvt. Ltd. was not Rs. 22,51,55,417.44, as stated in the Enquiry Report. In fact, I note from the ledger account submitted by the Noticee itself indicates that during the inspection period, the amount of funds transferred to Modispaces Real Estate Pvt. Ltd. was Rs. 58,03,58,852/- and the total amount of funds transferred since April 2015 was Rs. 2,89,91,79,652/-. However, I note that the Noticee has conveniently remained silent and not made correct submission of the loans given to Modispaces Real Estate Pvt. Ltd., to either the DA or before me. The Noticee was asked to submit the loan details and recovery details of the same during the personal hearing granted to the Noticee on February 28, 2023 and authorized representative of the Noticee submitted that he would provide the same in the written submissions that they would file thereafter. However, I note that the Noticee has failed to provide the same in its written submissions and have chosen not to submit any bank account statement or details of loans given to Modispaces Real Estate Pvt. Ltd. to clarify the actual/correct amount of loan given or recovered from/to Modispaces Real Estate Pvt. Ltd. In view of the above facts and circumstances and defense advanced by the Noticee, I find that it is a fit case to disagree with the recommendations of the DA and that directions of suspension of the certificate of registration of the Noticee for the period mentioned at para 17 below is warranted in this case.

Directions

17. In view of the above, I, in exercise of the powers conferred upon me in terms of Section 12(3) read with Section 19 of the SEBI Act and Regulation 27 of the

Intermediaries Regulations, hereby suspend the certificate of registration of the Noticee i.e. Keshav Securities Pvt. Ltd. (Reg. no. INZ000296230) for a period of two (2) months.

18. This order comes into force with immediate effect.
19. A copy of this order shall be served on the Noticee, Recognised Stock Exchanges and Depositories to ensure necessary compliance.

Place: Mumbai
Date: April 19, 2023

Sd/-
G P GARG
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA