

WTM/ AB /EFD-1/DRA-2/ 19 /2018-19

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Moongipa Investments Limited

In respect of: -

Noticee No.	Name of the Noticees	PAN
1	Moongipa Investments Limited	AAACM5584A
2	Mr. Madhur Agarwal	AAFPA1251Q
3	Mr. Sudhir Agarwal	AAFPA1250R
4	Mr. Subhash Chander Singal	AALPS3587R
5	Mr. Shiv Kumar Agarwal	AAFPA1252P

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as “the Noticees”

Background:

1. Securities and Exchange Board of India (hereinafter referred to as, ‘SEBI’) passed an ex – parte interim order dated September 10, 2015 (hereinafter referred to as, ‘interim order’) against the Moongipa Investments Limited (hereinafter referred to as, ‘MIL’/ ‘company’/ ‘broker’) and its directors, namely, Mr. Madhur Agarwal, Mr. Sudhir Agarwal, Mr. Subhash Chander Singal and Mr. Shiv Kumar Agarwal for *inter alia* failing to segregate its own and client’s funds and securities, refund its clients’ funds and securities due to them despite directions of IGRP/ IGRC of the NSE/ BSE and carrying out fund based activities. The Noticees were restrained from accessing the securities market till further directions.

2. It was further directed that the said order shall also be treated as a show cause notice asking the noticees to show cause as to why appropriate directions/prohibitions under section 11 and 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, 'SEBI Act') allowing the Noticees to file their objections, if any, within twenty one (21) days from the date of the interim order and avail an opportunity of personal hearing before SEBI. A copy of the interim order was served on all the Noticees.
3. Vide letter dated September 21, 2015, MIL while requesting SEBI to revoke the interim order against Noticee nos. 2 to 5, sought inspection of the documents relied upon by SEBI for passing the interim order in order to file a suitable reply. An inspection of the documents was provided to MIL on November 30, 2015 at SEBI's Northern Regional Office, New Delhi. The authorized representatives of MIL inspected the documents relied upon by SEBI on the said date and sought copies of certain more documents which were also provided to MIL on the same day. However, till date no reply has been received from the Noticee nos. 1,2, 3 and 5 namely, MIL and its directors namely, Mr. Madhur Agarwal, Mr. Sudhir Agarwal and Mr. Shiv Kumar Agarwal. Further, no request for personal hearing in connection with the interim order has been received by SEBI.
4. An opportunity of personal hearing was granted on December 10, 2018 which was communicated vide letter dated November 14, 2018. The hearing notice was served on Noticee nos. 2, 3 and 4 namely, Mr. Madhur Agarwal, Mr. Sudhir Agarwal and Mr. Subhash Chander Singal. The hearing notice issued to Noticee no. 1 and 5, namely, MIL and Mr. Shiv Kumar Agarwal returned undelivered.
5. However, vide email dated December 07, 2018, Mr. Madhur Agarwal wrote to SEBI that MIL was in receipt of Show Cause Notice (hereinafter referred to as, 'SCN') dated 15.11.2018 and that MIL has replied to the said SCN vide letter dated November 28, 2018. Vide email dated December 07, 2018, SEBI advised MIL to

attend the personal hearing scheduled on December 10, 2018 at 2.30 p.m. Vide email dated December 19, 2018, MIL was informed that its reply dated November 28, 2018 pertains to the Enquiry Proceedings initiated against the company by SEBI, and not with regards to the 11B proceedings initiated against it in connection with the interim order. MIL was advised to confirm if the reply dated November 28, 2018, also pertains to the 11B proceedings initiated against it or it may submit a reply to the interim order cum SCN dated September 10, 2015 issued against it in the 11B proceedings, if any, at the earliest. Another reminder was issued to MIL vide email on December 31, 2018. Vide email dated January 01, 2019, MIL was advised to reply to SEBI's email dated December 19, 2018 and December 31, 2018 on or before January 03, 2019, failing which it shall be construed that MIL has no reply to submit in the matter. However, till date no reply has been received from MIL.

6. During the personal hearing on December 10, 2018, Mr. Suresh Sant, authorized representative of Noticee no. 4 appeared before me and the matter was argued.

Consideration of issues

7. I have perused the interim order, replies filed by the Noticee no. 4, submissions made before me at the hearing by Noticee no. 4 and other materials available on the record. From the contents of para 5 of this order, I note that a number of opportunities have been given to MIL. However, till date no response has been received from the company.
8. MIL is registered with SEBI in the following categories:
 - (a) as a stock broker in equity segments of National Stock Exchange Ltd. (NSE) (Registration no.: INB230811734);

- (b) as a stock broker in equity segment of Bombay Stock Exchange Ltd. (BSE) (Registration no.: INB010811736);
 - (c) as a trading member in the derivative segment of NSE (Registration no. INF230811734)
 - (d) as a trading member in the derivative segment of BSE (Registration no.: INF010811736).
9. SEBI noticed that 16 complaints were received against MIL in the SEBI Complaints Redressal System (SCORES) during the period July 11-23, 2015. From analysis of these complaints, it was noticed that the complaints were in the nature of non-payment of funds and securities of the clients by MIL . Sensing the seriousness of the complaints, and non-adherence of directions of IGRP/IGRC orders, surprise inspection of MIL was conducted on August 03, 2015 by SEBI's inspection team with a focus on "Monthly/Quarterly running account settlement". During the inspection, various records of the broker were perused like complaint register, annual accounts, list of the clients, ledger accounts, demat statements, information about group companies, asset details etc. Based on the findings of inspection, it was felt that necessary action, including impounding and retaining the assets of MIL by way of an interim measure had to be taken immediately. Therefore, interim order dated September 10, 2015 was passed against the Noticees.
10. During the inspection it was observed that MIL was in violation of SEBI circular no MIRSD/SE/Cir-19/2009 dated December 03, 2009 on dealings between the clients and the stock brokers for the following acts of non-compliance with running account norms.

(a) *Non – settlement of accounts of clients*

- (i) MIL was not settling the accounts of the clients on monthly/quarterly basis. Vide undertaking dated August 3, 2015 MIL has admitted that it was settling only 70% of the clients' accounts but no basis for settlement rate was provided. On perusal of the ledger account of complainant clients, it was observed that their accounts were settled not even once during April 1, 2014 to August 3, 2015 despite having credit balance. I note that the aforesaid is in violation of Clause 12 (e) and (h) SEBI circular dated SEBI circular no MIRSD/SE/Cir-19/2009 dated December 03, 2009. which is reproduced as under:"

Running Account Authorization

12. Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

... ..

e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

... ..

h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.

- (b) Observations relating to running account settlement forms

- (i) On perusal of Running Account Authorization forms of some clients, it was observed that the said form contained the following clause, *“Please further note that that while I am entitled to revoke this authorization at any time, however, such termination shall be subject to the notice period of fifteen days from the date of physical delivery of revocation letter at your registered office to allow you to make necessary changes to handle my account without running account authorization”*. I note that the aforesaid clause is not in accordance with Clause 12 (c) of SEBI circular no MIRSD/SE/Cir-19/2009 dated December 3, 2009 which is as under:

Running Account Authorization

12. ...

c. The authorization shall contain a clause that the Client may revoke the authorization at any time.

11. MIL in its letter/ undertaking dated August 03, 2018 through its director, Mr. Madhur Agarwal, submitted that MIL sold securities of clients for meeting its own pay-in/margin obligations. I note that MIL sold securities of clients without their consent to meet its own pay-in/ margin obligation. Therefore, MIL has not only faulted in segregation of the securities of the client but has also misappropriated clients’ securities for personal financial obligations and thus violated the following provisions of various SEBI circulars which are reproduced below:

Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993:

“6. Member brokers shall issue the contract note for purchase/sale of securities to a client within 24 hours of the execution of the contract.”

Circular no. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008:

“2.1 Brokers should have adequate systems and procedures in place to ensure that client collateral is not used for any purposes other than meeting the respective client’s margin requirements /pay-ins.”

Circular no. CIR/MIRSD/16/2011 dated August 22, 2011:

Rights and Obligations documents for Stock Broker, Sub-brokers and Clients:

“15. The stock broker shall ensure that the money/securities deposited by the client shall be kept in a separate account, distinct from his/its own account or account of any other client and shall not be used by the stock broker for himself/itself or for any other client or for any purpose other than the purposes mentioned in Rules, Regulations, circulars, notices, guidelines of SEBI and/or Rules, Regulations, Bye-laws, circulars and notices of Exchange.”

12. I note that MIL has failed to refund to its clients funds and securities due to them despite directions of IGRP/IGRC thereby violating Clause 33 of Rights and Obligations document for Stock Brokers, Sub-Brokers and Clients - CIR/MIRSD/16/2011 dated August 22, 2011 and which is as under:

“The stock broker shall make pay out of funds or delivery of securities, as the case may be, to the Client within one working day of receipt of the payout from the relevant Exchange where the trade is executed unless otherwise specified by the client and subject to such terms and conditions as may be prescribed by the relevant Exchange from time to time where the trade is executed.”

13. The details of the pending investor complaints against MIL on SCORES as on August 31, 2015 are as under:

Details of Pending Investor Grievances

Entity	<=30 days	30 to 60 days	60 to 90 days	Total Pending
NSE	35	7	1	43
BSE	10	3	1	14
CDSL	14	0	0	14
Total	59	10	2	71

I note that as per regulation 9(e) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred as, 'Stock Brokers Regulations') one of the conditions of registration is that the broker shall take adequate steps for redressal of grievances of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board. I note that the MIL has failed to comply with Regulation 9 (e) by not taking adequate steps for redressing investor grievances.

14. During the inspection, Debtor/Creditor statement was submitted to the inspection team. On perusal of the same, it is observed that MIL had taken unsecured loans from 53 individuals amounting to Rs. 6.83 Crores and was paying interest (9% to 18%). It was observed from the financial ledgers of these individuals that MIL is paying the interest after deducting TDS. Further, it was also observed that some of these entities have also got UCC codes, however, none of them have ever traded through the broker. The trial balance as on March 31, 2015 and August 03, 2015 were sought during inspection. From perusal of trial balance dated August 03, 2015, it is observed that in addition to the unsecured loans of Rs 6.83 crores as mentioned above, there is an unsecured loan amounting to approx. Rs. 3.9 crores from 14 corporates.

15. I note that Rule 8(3) (f) of Securities Contracts (Regulation) Rules, 1957 prohibits member to carry out business activities (involving personal financial liability) other than securities/commodity derivatives which reads as under:

Qualifications for membership of a recognized 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 or commodity derivatives except as a broker or agent not involving any personal financial liability,”

In view of the above, such activity of the broker was in the nature of accepting deposits and paying interest to clients which can be termed as ‘fund based activities’, in violation of aforesaid Rule.

16. I note that as broker, MIL was required to uphold the Code of Conduct prescribed under Schedule II of the Stock Brokers Regulations.

“A. General

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

.....

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.”

From the acts and omissions by MIL as shown in the aforesaid paras, I note that, MIL has failed to comply with Clause A(1) and (5) of the Code of Conduct prescribed for brokers under the Stock Brokers Regulations.

17. In view of the above and in the absence of any reply from the Noticee nos. 1, I note that MIL has violated the following provisions of the following circulars and Rules, and has contravened conditions of registration as specified under regulation 9(e) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred as “Stock Brokers Regulations”) read with clauses A (1) and A (5) of the Regulations.

- i. Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993

- ii. Circular no. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008
- iii. Circular no. CIR/MIRSD/16/2011 dated August 22, 2011
- iv. Clause 12 of SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009
- v. Clause 33 of Rights and Obligations document for Stock Brokers, Sub-Brokers and Clients - CIR/MIRSD/16/2011 dated August 22, 2011
- vi. Rule 8(3) (f) of Securities Contracts (Regulation) Rules, 1957

18. The details of the directors of MIL, as available on MCA 21 Portal, is as under:

Sr. no.	Noticee no.	Name of the Director	Date of appointment	Date of cessation
1	2	Mr. Madhur Agarwal	10/05/2000	-
2	3	Mr. Sudhir Agarwal	10/05/2000	-
3	4	Mr. Subhash Chander Singal	08/06/2015	23/09/2015
4	5	Mr. Shiv Kumar Agarwal	11/12/1995	08/06/2015
5	-	Mr. Lalla Dhar Dubey	23/09/2015	-

19. Noticee nos. 2, 3 and 5 have neither submitted a reply nor appeared for a personal hearing before me in the matter. Noticee no. 2, 3 and 5 were directors of MIL when the violations were committed by MIL. They have failed to honour their duties as a director. Although, Noticee no. 5 resigned on June 08, 2015 i.e. before SEBI passing the interim order against MIL, I note that he was a director during the relevant time.

20. I also note that section 166 of the Companies Act, 2013 clearly lays down the duties and responsibilities of directors. As per section 166 (3), a director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. The Hon'ble Supreme Court in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 has observed that

“A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially”.

21. Even though the following observations made by the Hon’ble Supreme Court were in the context of a listed company in *N Narayanan v. Adjudicating Officer, SEBI* the principle relied therein is equally applicable in the context of a director’s duty to act diligently:

*“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in *Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602* that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”*

22. During the personal hearing, Mr. Suresh Sant, authorized representative of Noticee no. 4 appeared before me. It was submitted that Noticee no. 4 was appointed as a director of the company on June 08, 2015 and ceased to be a director from September 23, 2015. The interim directions have been passed by SEBI against the company and its directors on September 10, 2015. Therefore, the total tenure of his directorship is approximately three and half months only. During his tenure as a director, he never participated in any of the business decisions and dealings of MIL as stated in SEBI’s interim order have happened much earlier than his joining. Mr.

Suresh Sant was advised to furnish proof to substantiate his claim within a period of two days. Vide letter dated December 13, 2018, Noticee no. 4 submitted a copy of DIR -12 with respect to his appointment and resignation from MIL.

23. From the submissions made during the personal hearing, documents submitted by Noticee no.4 and letter dated December 13, 2018, I note that Noticee no. 4 was appointed as a director in June 08, 2015 and ceased to be a director from September 23, 2015 i.e. after a period of three and a half months. As the interim order was passed by SEBI on September 10, 2015 for violations committed prior to the appointment of Noticee no. 4 as a director of MIL, I am inclined to accept the submissions made on behalf of Noticee no. 4 and no directions are called for against him. Accordingly, the directions as passed against Noticee no. 4 in the interim order dated 10/09/2015 are also withdrawn.

24. I note that Noticee no. 1 has been expelled as a trading member from NSE and it has been declared as a 'Defaulter' by BSE. Pursuant to this, BSE and NSE have invited claims vide public notice, from the constituents against Noticee no. 1, which were accepted till 09/02/2016 and 17/02/2016, respectively. Accordingly, stock exchanges have settled some of the claims against Noticee no. 1 from IPF. I also note that CDSL has also settled some complaints (for unauthorized debits) against Noticee no. 1, through replenishment of securities.

ORDER & DIRECTIONS

25. In view of the above facts and circumstances, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby issue the following directions:

- a. Noticee nos. 1, 2, 3 and 5 namely, Moongipa Investments Limited (PAN: AAACM5584A), Mr. Madhur Agarwal (PAN: AAFPA1251Q), Mr. Sudhir Agarwal (PAN: AAFPA1250R) and Mr. Shiv Kumar Agarwal (PAN: AAFPA1252P) are jointly and severally liable to settle the claims due, payable

and deliverable to the claimants that are not settled/paid (in part/full) from the IPF of the stock exchanges, in respect of the claims that are received by the stock exchanges upto February 17, 2019 (i.e. the date arrived at the completion of three years from the date of expiry of the specified period for lodging of the claims with the Exchange Defaulters' Committee)

- b. As the noticee nos. 1,2,3 and 5 failed to appear and/or respond to the interim order-cum show cause notice dated 10/09/2015, the Recovery Officer of SEBI shall in exercise of powers conferred u/s 28A of SEBI Act liquidate the assets of the aforesaid Noticees, to the extent required for compliance of this direction, including the financial assets which are already impounded by SEBI and the same be utilized for the purpose of settling the aforesaid claims of claimants of MIL after considering the claims already settled by the stock exchanges and depositories.
- c. The directions contained in the interim order dated 10/09/2015 with respect to restriction on alienation/disposal of assets of the Noticee Nos. 1, 2, 3 & 5 shall continue till the completion of aforesaid recovery by the Recovery Officer. It is clarified that such restraint on disposal/alienation of assets on the aforesaid noticees, shall not be applicable with respect to the directions contained in para 25(b) above.
- d. The aforesaid Noticees are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **five (5)** years, from the date of this order. During the period of restraint, the aforesaid Noticees' existing holding, including units of mutual funds, of the said Noticees shall remain frozen. In this connection, I note that the aforesaid four noticees have already undergone prohibition for more than three years. Hence, the prohibition already undergone by the said four noticees pursuant to the interim order shall be

adjusted while computing the period in respect of prohibition imposed vide this order.

26. In view of the findings at para 23 above, the proceedings against Noticee no. 4 viz. Mr. Subhash Chander Singal (PAN: AALPS3587R) are disposed of in terms of the directions contained in therein.

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

28. A copy of this order shall be served on all recognized stock exchanges, depositories and RTAs of mutual funds to ensure compliance with above directions.

Sd/-

Date: February 8, 2019

ANANTA BARUA

Place: Mumbai

WHOLE TIME MEMBER