

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under Section 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992

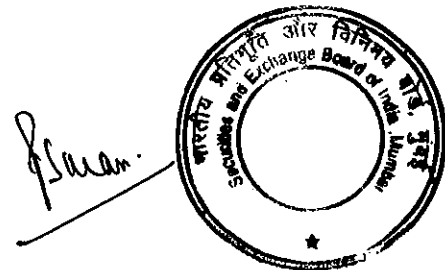
In respect of Sunchan Securities Limited, its directors Mr. Sunil B. Mansinghani, Ms. Kanchan Mansinghani, Mr. Ashok Daswani, Mr. Surendra Gama Yadav and the compliance officer, Mr. Riyaz Ismail Shaikh

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') advised National Stock Exchange (hereinafter referred to as 'NSE') and Bombay Stock Exchange (hereinafter referred to 'BSE') to carry out special purpose inspection of Sunchan Securities Limited (hereinafter referred to as 'Sunchan'), the stock broker and submit a factual report, upon receipt of various complaints against Sunchan, regarding the non-receipt of the funds/securities and other investor grievances. NSE and BSE forwarded the findings of respective inspection to SEBI. The important findings of the inspection as against Sunchan *inter alia* were mis-use of clients funds and securities, failure to deliver securities and funds to clients, non-maintenance of records, failure to redress grievances, disproportionate exposure to clients, etc. NSE and BSE were also advised to take appropriate remedial measures in view of the possibility of the default by Sunchan.
2. Upon consideration of the findings of the inspection of NSE and BSE, SEBI, issued an *ad interim ex-parte* Order dated January 30, 2009, *inter alia* directing Sunchan, its directors namely Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ajay Janardan Kotwal and its compliance officer, Mr. Riyaz Ismail Shaikh, not to buy, sell or deal directly or indirectly in securities in any manner whatsoever, either for themselves or for their clients, pending inquiry. The *ad interim ex-parte* order was to be treated as a show cause notice by Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ajay Janardan Kotwal and Mr. Riyaz Ismail Shaikh and these were advised to show cause within 15 days from the date of the order as to why the directions passed should not be continued and other appropriate directions should not be issued. The *ad interim ex-parte* order also offered opportunities of personal hearing on specific requests to be received within 15 days from the date of the order.

Prashant Saran



3. Personal hearing was afforded to Sunchan, its directors namely Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ajay Janardan Kotwal and its compliance officer, Mr. Riyaz Ismail Shaikh on April 01, 2009. Subsequently, SEBI confirmed the *interim* directions against Sunchan, Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani and Mr. Riyaz Ismail Shaikh, vide its order dated October 26, 2009. However, the directions as against Mr. Ajay Janardan Kotwal were revoked vide the same order as he was found not to be a director of Sunchan and his name had erroneously appeared in the papers filed with BSE and NSE by Sunchan.
4. In the meantime, SEBI initiated the Enquiry proceedings against Sunchan, being a registered intermediary, in terms of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as 'Intermediaries Regulations'). Upon completion of the Enquiry, SEBI vide order dated December 08, 2010, found the acts of Sunchan violative of the SEBI Act, 1992 (hereinafter referred to as the 'SEBI Act'), Securities Contracts (Regulation) Rules, 1957, SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the 'Broker Regulations') and various circulars issued by SEBI. Considering the seriousness of the findings against Sunchan, SEBI cancelled the certificates of registration granted by it to Sunchan to act as a stock broker on the National Stock Exchange (hereinafter referred to as 'NSE'), Bombay Stock Exchange (hereinafter referred to 'BSE'), OTC Exchange of India (hereinafter referred to as 'OTCEI') and MCX Stock Exchange Limited (hereinafter referred to as 'MCX-SX').
5. On the basis of the findings in the Enquiry proceedings, SEBI issued three show cause notices (hereinafter referred to as 'SCN') all dated June 30, 2011. The **first** of these SCNs was addressed to **Sunchan**, the **second** was addressed to its directors namely **Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ashok Daswani, Mr. Surendra Gama Yadav** and the **last one** was addressed to the compliance officer, **Mr. Riyaz Ismail Shaikh** (hereinafter all collectively referred to as 'noticees' and individually by their respective names). The SCN stated that the noticees namely Sunil Mansinghani and Ms. Kanchan Mansinghani (who was also a major shareholder of Sunchan) were the designated directors of Sunchan when the irregularities in the operations of Sunchan were committed. As per the SCN, Ms. Kanchan Mansinghani had resigned as on September 05, 2008. Pursuant to the resignation of Ms. Kanchan Mansinghani, Mr. Surendra Gama Yadav was appointed as a director of Sunchan. The SCN also states that Mr. Ashok Daswani is the director of Sunchan. The SCN has alleged that Sunil Mansinghani, Ms. Kanchan Mansinghani, Ashok Daswani and Surendra

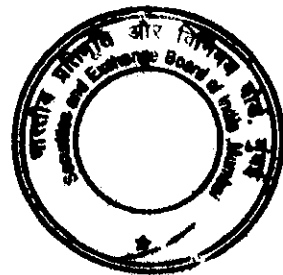


Gama Yadav had individually as well as collectively, exercised the 'control' in Sunchan at the relevant point of time and are responsible for the violations committed by Sunchan. The noticee namely Riyaz Ismail Shaikh has been named as the key management personnel of Sunchan and has failed to comply with the provisions of Regulation 18A(1) and 18A(2) of the Broker Regulation.

The SCN has asked the noticees as to why the following actions under Sections 11, 11B and 11(4) of the SEBI Act should not be initiated:

- i. To restrain the noticees from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a specified period.
 - ii. To direct Sunchan and its directors namely Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ashok Daswani, Mr. Surendra Gama Yadav to replenish the Investor Protection Fund (hereinafter referred to as 'IPF') of BSE to the extent of ₹1,60,81,597.84 and IPF of NSE to the extent of ₹2,34,33,233.74, i.e. the amount disbursed from IPF towards the claims of the investors of Sunchan as a stock broker.
 - iii. To direct Sunchan and its directors namely Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ashok Daswani, Mr. Surendra Gama Yadav to compensate investors to the extent their claims were not fully met out of the IPF of ₹4,27,48,132.17 i.e. the claim admitted less the amount disbursed out of IPF.
 - iv. To prohibit Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ashok Daswani, Mr. Surendra Gama Yadav from holding the position of director in any of the listed company for a specified period.
 - v. To prohibit Mr. Riyaz Ismail Shaikh from being associated with any intermediary or any entity registered with SEBI for a period as may be specified.
6. The noticees replied vide separate letters. Thereafter, an opportunity of personal hearing was afforded to the noticees on November 11, 2011. However, the same had to be rescheduled due to certain administrative exigencies. The noticees were finally heard on October 04, 2012, when all the noticees except Mr. Ashok Daswani appeared and made submissions. Mr. Ashok Daswani vide his letter dated October 11, 2012 and email dated October 26, 2012, submitted that he would not be able to present during the personal hearing. The submissions made by the noticees, oral (wherever made) and written are summarized below:

P. Shaikh



a. Sunchan Securities Limited and Sunil Mansinghani vide separate letters both dated July 20, 2011, submitted the following common arguments, the same are as under:

- Sunchan was the trading member in NSE since April 04, 2005 and was getting its trade initially cleared through the clearing member, IL&FS at NSE. After March 25, 2008, it started clearing its trades through one SMC Global Securities Limited (hereinafter referred to as 'SMC'). Sunchan was also a member of BSE/ NSE cash segment till October 2008 and had never received any letter of reprimand from either of the exchanges. The pay-in and pay-out of funds and securities were directly done with the NSE/ BSE for cash segment. Only in the case of F&O segment, as Sunchan was a trading member, it had to route all the dealings through a clearing member.
- Around January 2008, SMC had approached Sunchan with its proposals to allow absolute flexibility in terms of margin requirements and also on the exposure limits to Sunchan. It was offered that the margin requirements could be dispensed with and SMC would endeavor to comply with the necessary formalities with the exchange on the margin requirements by levying interest on the shortfall in margin, if any, on Sunchan. SMC further offered Sunchan to pay bank guarantee charges at 2% on the total margin. Sunchan, getting carried away with the proposals of SMC, agreed to avail the services of SMC and accordingly executed the Clearing- Trading Member Agreement dated March 14, 2008.
- Sunchan used to give its shares and the shares belonging to the clients to SMC as collateral margin. It also gave fixed deposits and cash margin from time to time. Sunchan had also approached its clients/ investors and asked them to participate in its options strategy by giving their shares/ funds towards their position.
- Sunchan had taken authorization from its clients to keep the securities as margin for initiating trades in cash/ derivatives segments. The client accounts were being maintained on running account basis across all the segments (i.e. BSE/ NSE and F&O). Unless specified by the clients to transfer the securities into their demat accounts, the securities were transferred to the clearing members as collaterals. The client shares were pledged for the purpose of the clients' position in the F&O and the collateral were placed upfront before the clients took the position in F&O.
- The arrangement with SMC was fine till September, 2008. However, in October, 2008, due to sudden fall in NIFTY, the valuation of the shares kept as collaterals with SMC reduced considerably. SMC reduced the limits of Sunchan. On October 6, 2008, SMC approached

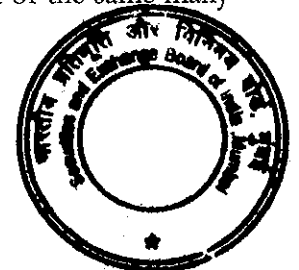
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Sunchan and advised it to furnish a security cheque of ₹ 10 crore. Hence on October 7, 2008, Sunchan issued 18 cheques of ₹ 50 lakhs each, in addition to 3 other cheques (2 of ₹ 20 lakhs and one of ₹ 30 lakhs) and 2 cheques of ₹ 50 lakhs each as a security. The said cheques were undated at the behest of SMC. Sunchan in the meantime was informed by their banker that nine cheques were presented by SMC have been returned as unpaid. Upon this Sunchan called up SMC for clarifications, as no satisfactory reply was coming Sunchan immediately stopped the payment against all the cheques, issued by it. On this, SMC without seeking any explanation curtailed the trading limit of Sunchan and thereby was exposed to risk.

- Later, on October 20, 2008, one Mr. Anurag Bansal, the whole time director of SMC visited the office of Sunchan and thereafter limits were increased even when the margin shortfall as on October 17, 2008 was ₹ 27.44 crores. Anurag Bansal then hedged the position in complete disregard of the instructions of Sunchan. The hedging started by selling futures, but the entire position was not hedged and thereby it failed to cover the risk of Sunchan.
- On October 21, 2008 without the knowledge of Sunchan, SMC squared up part of the position of Sunchan, which were already hedged. SMC sold the shares lying with it as collateral margin. SMC also withdrew the close out facility available to Sunchan for closing out the position from October 21, 2008. SMC had option to square off all the outstanding contracts. However, it failed to square off the entire position and the last position was finally squared off on November 05, 2008. Contrary to the rule that when there is nil margin, any outstanding position cannot be sustained. SMC had first sold the securities and thereafter squared the positions in piece meal, due to which, Sunchan could not return the shares to its clients.
- SMC had chosen to collect less margin from Sunchan for profit motives and was exposed to high risk. SMC had never given trading limits as per the regulations. The ledger account as furnished by SMC shows that from April 2008 there was a continuous debit balance in the account of Sunchan except for few instances. The average shortfall in the margin of Sunchan, since April 2008 was 70%.
- In order to avoid the claim of Sunchan, SMC filed a complaint with the exchange and also initiated arbitration proceedings before NSE. National Stock Exchange Clearing Corporation Limited (NSECCL), vide its fax dated November 11, 2008 had informed Sunchan about the complaint filed by SMC and asked Sunchan to respond to the same. On the filing of its reply, its terminals were shutdown as on November 12, 2008. As a result of the same many

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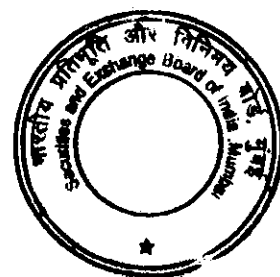
receivables due to Sunchan could not be recovered, further, it was unable to pay the creditors and meet its obligation.

- The promoter of Sunchan, Ms. Kanchan Mansinghani, sold her properties and brought the money to pay off the bank overdraft (Bank of India) of Sunchan and also to make payment to the clients of Sunchan, however the gravity of the situation was so big that all the efforts looked trivial.
- Sunchan had never traded in its name against the exposure received by pledging clients' securities with SMC unless the shares have been allocated to it under loan scheme therefore it was never required for it to be registered as a portfolio manager. Sunchan has submitted that it gave advisory services to its clients or took shares from clients on loan and also gave them a certain percentage of its profits as compensation for the use of their shares which does not tantamount to unregistered portfolio manager.
- It used to give leverage to its clients after considering and testing the risk management policies and the strength of clients to observe the exposure. The risk management policies are broad based policies and hence it is very difficult to incorporate day to day risk perception of the market. It had given maximum co-operation to the inspection team considering the time when inspection was conducted as there was utter chaos, office properties were damaged, clients were abusive, staff had left etc.

It was maintaining the records as per the requirements of the exchanges. However, due to non availability of features of segregation of clients' securities in its back office software, it took some time to furnish the data in requisite format to the inspection team.

- On reduction of the limits by SMC, the terminal of Sunchan was on square off mode from October 21, 2008. The situation worsened after the abrupt closure of the terminal by NSE on November 12, 2008. The clients anticipating trouble stopped paying their dues. Due to all these, it was not able to make any collections from the debtors and were not able to redress the grievance of all the investors. It has cleared and settled accounts of more than 125 clients either by way of one time settlement or a portion of the amount has been paid and the balance amount has been paid through post dated cheques.
- The inspection team had failed to consider the shares placed as collaterals by the clients towards the margin. In all the previous NSE inspections there were no instances of wrong reporting or mis-statement by Sunchan. There were some errors in reporting the margins, however, Sunchan had at all times collected 100% margin from its clients.

Kanchan



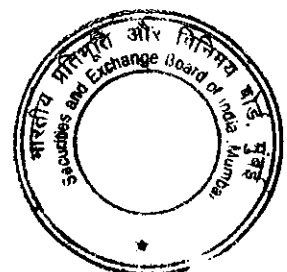
NSE in its initial inspection report has admittedly computed the value of wrong reporting with regard to the collection of the margin at ₹21.34 crores. Thereafter, Sunchan vide letter dated January 23, 2009 had submitted a CA certificate to NSE. It is now being said that Sunchan had collected short margin of ₹14.84 crores. The NSE inspection team has failed to consider the collateral provided by its clients and thus has not given the credit for the same while analyzing the alleged wrong reporting.

- It had been explained to the inspection team that no two client codes are operative at a given point of time. The observation regarding the multiple codes was raised during the inspection conducted in October 2007/ May 2008 and it was brought to the notice of the exchange that codes were discontinued long back.
- Until June 2008 it used to send the statements regularly to its clients. After June 2008, many of its employees had left the firm therefore it was very difficult for it to send out statements to its clients.
- The name of Mr. Ajay J. Kotwal was erroneously reflecting in the papers filed with BSE and NSE at the time of application for membership. Thereafter, it has been a 'copy and paste' error of the data in the following years. The records of Registrar of Companies clearly spells that he was not a director of Sunchan. No case has been made out to show that it had made any undue advantage or profit by using Mr. Ajay J. Kotwal's name.
- Sunil Mansinghani has sold his assets that were pledged to pay margins to SMC and banks. Further, Sunchan is in the process of liquidation.
- As Sunchan does not have any resource to pay the IPF of NSE and BSE or pay the clients, it has requested to clear the clients' dues from SMC.

b. Ms. Kanchan Mansinghani vide her letter dated July 23, 2011 submitted as under:

- She had resigned from the directorship on September 5, 2008, due to personal reasons and was not aware of the happenings in the company. The allegation in the SCN pertains to the situation arising after her registration
- During her directorship, she was not involved in the running of the day to day business of Sunchan. She had taken care of the business account, administration and was also handling petty cash expenses of Sunchan. She had no knowledge of the arrangement with SMC.
- Sunchan had a share capital of ₹4 crore brought in by the promoters which stands in credit. Therefore, the allegation that the debit of ₹1.07 crore was funded from the client funds is wrong.

R. K. Ram



- She had sold all her properties in order to bring in money into Sunchan to pay off the bank overdraft of Sunchan and also to make payments to the clients of Sunchan. However, as the business of Sunchan had suffered and the earnings were zero, the company and its directors could not clear the dues of the clients.
- She had stopped coming to office after her resignation. As the inspection was in November 2008, she has no knowledge of what happened about it. However, under the situation prevalent at that point of time, it was not possible to comply with all the requirements of the inspection team immediately.
- She was never involved in the running of the clientele business and therefore cannot be held responsible for any allegation against her on the violation of Code of Conduct, failure to provide information to clients.
- Being a promoter shareholder, she was not required to attend office. She was under the impression that her resignation from the directorship was informed to SEBI.
- Mr. Ashok Daswani was also a director as evident from the RoC records but he always remained a dormant director. He was never involved in the business of Sunchan.

c. Mr. Ashok Daswani vide his letter dated July 20, 2011 submitted as under:

- He is a retired person and was neither involved in the running of Sunchan nor had any knowledge of the business/ expanse of Sunchan.
- He is related to both Ms. Kanchan Mansinghani and Sunil Mansinghani. He is an inactive director and a shareholder of Sunchan. As 7 shareholders are required to form a limited company, therefore he was also approached to subscribe 2 shares at the time of formation of Sunchan. Later, he was also appointed as director of Sunchan. He is not aware whether Sunchan has given any intimation about his directorship.
- Alleged findings in the SCN are primarily arrived based on the incorrect observations in the limited inspection report conducted by Stock Exchange.
- He is not aware as to how an outstanding amount of ₹16,42,906.85 in his ledger account MIA002 has appeared. He was trading only in cash market in BSE and NSE. He has denied any involvement in any kind of fund based activity.

d. Mr. Surendra Gama Yadav vide his letter dated July 20, 2011 submitted as under:

- He was just a newly appointed director of Sunchan and was in no manner involved in what was happening in the company.

P. Gama

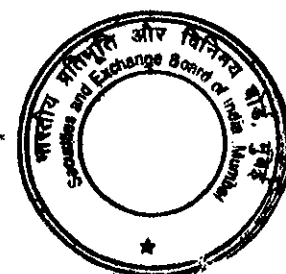


- BSE and NSE had come for inspection in the end of November, 2008 and by then he had already stopped going to office of Sunchan as he did not wish to be associated with them (the company and its directors). He has no knowledge of what transpired during the inspection in 2008.
- He was appointed a director in September, 2008 and he had informed about his wish of not continuing with the company in the first week of November.

e. Mr. Riyaz Ismail Shaikh vide his letter dated July 20, 2011 submitted as under:

- He was with Sunchan since October 01, 2001, in various capacities like Operations Manager, Compliance Officer, Branch Manager. His functions as operations manager was to ensure smooth functioning of trading terminals, coordination with IT personnel for up-gradation of hardware/ software and with telephone exchanges for smooth functioning of lease lines.
- He has worked with integrity and in the year 2006, he became the Compliance Officer of Sunchan. His functions as a compliance officer included updating the management with recent circulars for timely action as per the circulars of the exchanges, uploading terminal details to the exchange, submission of audited reports to the exchanges, representing the company during exchange inspections. There was smooth pay out of funds and securities to the clients as and when required by the clients.
- The clients' shares were never used as collaterals for taking exposure in proprietary/ directors' accounts. As per the guidelines of NSE, clients were required to keep margin prior to taking of exposure in the F&O segment. His role as a compliance officer was to ensure that clients' collaterals were placed with exchange in advance so that they could take exposure in F&O segment. The clients had mandated Sunchan to keep their shares as collaterals with the clearing member so that they can take exposure in F&O segment whenever required. However, due to uncertain markets, many clients did not take any exposure in F&O segment hence it was construed by NSE that clients' collaterals were used for taking exposures in proprietary and personal account.
- Sunchan only provided their clients with the guidance in derivatives segment and it neither purchased nor sold shares on behalf of the clients and hence Sunchan had not acted as portfolio advisers as no portfolio involved in their guidance.
- As regards the allegation regarding failure to provide client wise break-up of securities it has been said that the same was not readily available and requested to take a lenient view as the circumstances were trying in which the inspection was conducted.

Riyaz Ismail Shaikh



- Sunchan had more than 3,000 clients. Sunchan was able to maintain trouble free relationship with them due to which there was no grievance. Prior to November 2008 there was not a single arbitration case pending in BSE. In NSE they had one arbitration case which was passed in their favor. The grievance started arising after the collaterals were liquidated by SMC by which they were unable to return the shares and address the grievance of clients to the satisfaction. As a compliance officer, he was working to the satisfaction of clients but could not do much in crisis as things were out of control.
 - Due to utter chaos since October 2008, Sunchan was unable to send the statement which were due.
 - At the time of application for membership of the exchanges, he was not the compliance officer in Sunchan.
 - He has made himself present in all the grievance redressal forums conducted by the exchanges and submitted all the information required from time to time although with some delay in certain matters. They helped their clients in the arbitration matters before NSE and BSE by issuing ledgers and various other documents from time to time thereby avoiding any delays or troubles to its clients and exchanges.
 - The inspection by NSE was conducted for a period starting from October 21, 2008 to November 12, 2008, during this period already there was chaos in Sunchan. He has high regards for the rules and regulations set by SEBI and the stock exchanges for the protection of the interest of the investors. Being an employee, he could have done nothing beyond reporting discrepancies to the directors. It was up to them to take remedial action. Allegation like non co-operation by NSE against him is totally unfair as only few employees were left with Sunchan due to large scale retrenchment of job and harassment of staff by the clients in the office.
7. At the outset, I note the submission of Sunchan in its reply dated July 20, 2011 that there was shortfall in the margin position which it used to make good as per the understanding with SMC. This, according to me, shows that Sunchan did not collect the required margins. It is seen that Sunchan and Sunil Mansinghani in their respective replies have made various allegations against SMC. In this regard, I note that the present proceedings are in respect of the alleged role of Sunchan, its directors and its compliance officer w.r.t the violations alleged against Sunchan, as discussed in detail in the SEBI order dated December 08, 2010. I have considered the submissions of Sunchan and note that similar arguments were made by it in the

P. Sanchan

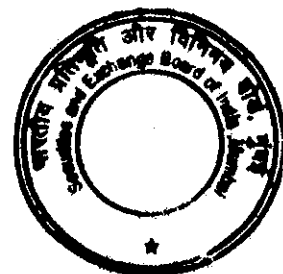


Enquiry proceedings initiated against it which were duly considered in the SEBI order dated December 08, 2010 whereby the certificates of registration granted to Sunchan to act as stock broker were cancelled. I note that Sunchan has also not preferred any appeal against the said order of SEBI, which shows that the Enquiry proceedings have attained finality vide order dated December 08, 2010. Considering the above, the scope of the present proceedings is only to consider whether the directions contemplated in the SCNs be issued against Sunchan and the other individuals (who are/ were the directors and compliance officer of Sunchan) in respect of the violations committed by Sunchan as found in the SEBI order dated December 08, 2010.

8. Before proceeding further, let me bring out the violations proved as against Sunchan in the Enquiry proceedings which culminated in the order dated December 08, 2010:

- Sunchan had misused the clients' securities and funds for its trade obligations and those of its directors. The stock broker had not accounted for clients' securities worth over ₹5 crores. The fact that Sunchan was taking more exposure in the securities market which was not commensurate with its own financial soundness and that it was utilizing the securities of its clients to take such exposure through SMC was found to be against the interest of its clients and in violation of the Clause A(4) of the Code of Conduct prescribed for stock brokers in Schedule II read with Regulation 7 of the Broker Regulations and the SEBI Circulars dated November 18, 1993, and August 26, 2004.
- Sunchan and its directors were trading in their own names against the exposure received by pledging the clients' securities with SMC and sharing the profits with its clients. Its act of taking general authorization from all its clients for maintaining their shares as collateral with the clearing member and operating a "Loan Scheme", where securities were accepted from the clients on profit sharing basis duly falls in the definition of the 'portfolio manager' in terms of Regulation 2(cb) of the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993. Such acts of Sunchan were in contravention of the provisions of Section 12(1) of the SEBI Act.
- Sunchan had accommodated its clients for the transactions in securities without collecting the obligations from them and funded the said transactions in violation of the provisions of the Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 and the SEBI Circular No. SMD/POLICY/CIR-6/97 dated May 7, 1997.

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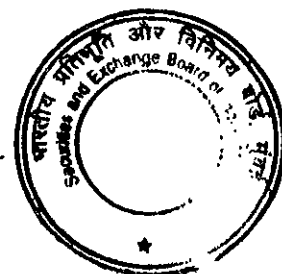


- Sunchan admittedly could not co-operate fully with the inspection team of NSE due to certain stated reasons. However the fact remains that such acts were in violation of the Regulation 21(1) of the Broker Regulations
- Sunchan by not taking effective steps to resolve the pending complaints against it, has contravened Regulation 6A(1)(e) of the Broker Regulations.
- Sunchan by reporting falsely that it had collected adequate margins as required, has failed to act with high standards of integrity and fairness in the conduct of its business, in violation of the Clauses A(1) and C(6) of the Code of Conduct for Brokers as prescribed in Schedule II read with of Regulation 7 of the Broker Regulations.
- Sunchan is found to have used multiple client codes during the relevant period as discussed in the order dated December 08, 2010 in violation of the provisions of SEBI Circular dated July 18, 2001.
- Sunchan's admission of not sending the quarterly statement of accounts/ holdings and daily margin statements to its clients for the quarter - July to September 2008, is in violation of the SEBI Circular dated April 17, 2008 and Regulation 6A(1)(b) of the Stock Brokers Regulations and Clause A(5) of the Code of Conduct for stock brokers as prescribed thereof.
- Sunchan had carelessly and in a negligent manner, wrongly mentioned the name of Mr. Ajay Janardhan Kotwal as its director, when the said person was never appointed as its director at any point in time. In doing so, Sunchan had submitted/ filed false or misleading returns to the stock exchanges and had failed to conduct itself in a fair manner, as required in terms of Clauses A(1) and C(6) of the Code of Conduct for stock brokers prescribed under the Stock Brokers Regulations.

9. Considering the above, I note that the violations proved as against Sunchan are serious in nature which clearly indicates that its affairs as a stock broker in the securities market were not conducted in accordance with law. Having considered the same, the issues that remain for consideration are:

- a. Whether Sunil Mansinghani, Ms. Kanchan Mansinghani, Ashok Daswani and Surendra Gama Yadav being the directors of Sunchan at the relevant point of time are responsible for the violations committed by Sunchan?
- b. Whether Riyaz Ismail Shaikh was the key management personnel of Sunchan and if yes, is guilty of the violations against Sunchan/him as alleged in the SCN?

Sunchan



10. Whether Sunil Mansinghani, Ms. Kanchan Mansinghani, Ashok Daswani and Surendra Gama Yadav being the directors of Sunchan at the relevant point of time are responsible for the violations committed by Sunchan?

a. The persons namely Sunil Mansinghani, Ms. Kanchan Mansinghani, Ashok Daswani and Surendra Gama Yadav have been alleged to be the directors of Sunchan during the period of violations and are stated to be responsible for the violations committed by Sunchan. The SCN has also alleged that these persons were exercising control in the running of Sunchan.

b. Having considered the above findings about the Sunchan, now I proceed with the roles of directors of Sunchan and its compliance officer:

- Sunil Mansinghani is admittedly a director of Sunchan. I have also perused the Annual Return of Sunchan for the year ended March 31, 2007, filed with the Registrar of Companies and note that Sunil Mansinghani owns 50 shares of Sunchan. I note that the reply dated July 20, 2011, on behalf of Sunchan is also signed by Sunil Mansinghani in the capacity of a director which goes on to show that he was in the management and control of the affairs of Sunchan, during the period when the violations had occurred. Admittedly, the average shortfall in Sunchan's margin was 70%, since April 2008. In October 2008, the valuation of the shares kept as collateral with SMC had reduced considerably and resulted in default.

- As regards the noticee namely Ms. Kanchan Mansinghani, I note that she was one of the directors of Sunchan at the relevant point of time and has resigned from the post on September 05, 2008. A perusal of the Annual Return of Sunchan for the year ended March 31, 2007, filed with the Registrar of Companies shows that she owns approximately 99.99% (39,99,944 shares out of 40,00,000 shares) of the share capital of Sunchan. At this stage, I note that Sunchan has not taken any specific permission/ approval for the change in its constitution when Ms. Kanchan Mansinghani was resigning in terms of the Regulation 6A(1)(c) of the Broker Regulations. These facts shows that Ms. Kanchan Mansinghani is a major shareholder of Sunchan and was one of the designated directors of Sunchan during the relevant period of April 2008 to September 2008, in which, admittedly the company was in default.

P. Kanchan



- Mr. Ashok Daswani as per the available records is one of the directors of Sunchan. Further, as per the Annual Return of Sunchan for the year ended March 31, 2007, filed with the Registrar of Companies shows that he owns 2 shares of Sunchan. Ashok Daswani in its reply has submitted that he was never a part of the decision making process of Sunchan and had never participated in any business of Sunchan.
- I note that Mr. Surendra Gama Yadav was appointed as a director of Sunchan when there was a vacancy on account of resignation of Ms. Kanchan Mansinghani from the directorship of Sunchan i.e. in September 2008 (during this time SEBI/ stock exchanges had started receiving investor complaints against Sunchan). On perusal of the form 32 submitted by Ms. Kanchan Mansinghani, it is noted that Surendra Gama Yadav was appointed as director of Sunchan on September 05, 2008.
- c. On consideration of the above, I note that persons namely Sunil Mansinghani, Ms. Kanchan Mansinghani and Ashok Daswani were the directors of Sunchan when the alleged irregularities as discussed in paragraph 7 above, were being committed by Sunchan. At this stage, I also note that Ms. Kanchan Mansinghani is the wife of Sunil Mansinghani. Further, Ashok Daswani is admittedly related to both Sunil Mansinghani and Ms. Kanchan Mansinghani.

It is observed from the submission that Ms. Kanchan Mansinghani had resigned from the post of director on September 05, 2008 and Surendra Gama Yadav was appointed as the director of Sunchan in her place. It is a fact that the resignation of Ms. Kanchan Mansinghani was never informed to SEBI. In addition, the appointment of Ashok Daswani and Surendra Gama Yadav as directors of Sunchan were also not reported to the stock exchange/s or SEBI. These facts go on to suggest that Sunchan was not transparent in its dealings.

- d. Ms. Kanchan Mansinghani in her reply has argued that pursuant to her resignation, she was not aware of the 'going on' in Sunchan. This submission of Ms. Kanchan Mansinghani is devoid of merits as she was a director during April 2008 to September 2008, when Sunchan was in continuous margin default. Further, prior to her resignation date i.e. September 05, 2008, SEBI/ stock exchanges had started receiving investor complaints against Sunchan which shows that the affairs of Sunchan were not being handled in a professional manner during her tenure. Further, on the date of resignation of Ms. Kanchan Mansinghani, as noted above, she remained the major shareholder of Sunchan.

P. Kanchan



As regards the argument taken by Ashok Daswani, that he is an inactive director of Sunchan, I note that Sunchan has not given any such intimation to SEBI. As per the annual returns he was appointed as director of Sunchan on December 07, 1994. Further, from the trial balance of Sunchan, it is seen that as on March 31, 2009, a sum of ₹16,42,906.85 was showing outstanding against Ashok Daswani (ledger account no. MHA002). Ashok Daswani has not given any explanation in this regard.

Surendra Gama Yadav has pleaded that he was a newly appointed director and not involved in the running of Sunchan. Further, it has also been submitted that he had informed about his wish of not continuing with Sunchan in the first week of November, 2008 to the company. These submissions of Surendra Gama Yadav appear to be mere afterthoughts.

- e. In the present case, I note that Sunchan was an active trading member and was taking positions in the securities market on behalf of its directors and investors without keeping proper margins. The purpose of keeping sufficient margins is to mitigate the risk. But admittedly Sunchan collected less margins from its clients and assured them that they will not be required to pump in money owing to the fluctuation in market. Sunchan in its own admission says that there was a continuous shortfall in the margin of Sunchan since April 2008. It has been said that the average shortfall in its margin since April 2008 was 70% and was exposed to high risk, however, it was being accommodated to take bigger exposure by getting extra margin exposure compared to the collateral provided by it.

These admitted facts suggest that the affairs of Sunchan were not conducted in a manner beneficial for its growth or for overall market. I note that the directors of a company have a fiduciary duty towards the company and the powers assigned are only exercisable by them in their fiduciary capacity. In view of the same, it can be concluded that all the directors of Sunchan whether present or past (during whose tenure the violations were committed) were acting negligently and are liable for the breach of fiduciary duty assigned to them. Further, the directors being the persons who are responsible for the conduct of the business of the company, are bound to act with utmost good faith, care, skill and diligence. The acts of directors should be aimed at the ultimate benefit for the company, in accordance with Rules and Regulations.

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- f. From the aforesaid discussions, it can be said that the directors of Sunchan namely Sunil Mansinghani, Ms. Kanchan Mansinghani, Ashok Daswani and Surendra Gama Yadav, individually as well as collectively, were running Sunchan at the relevant point of time and are responsible for the violations proved as against Sunchan.

11. Whether Riyaz Ismail Shaikh was the key management personnel of Sunchan?

- a. Having considered the role of the directors of Sunchan, let me examine the role of Mr. Riyaz Ismail Shaikh who admittedly was the compliance officer of Sunchan, at the relevant point of time. I note that the role of the compliance officer is to make sure that the functions of a company are being conducted in compliance with the applicable rules and regulations.
- b. I note that Riyaz Ismail Shaikh is working with Sunchan since October 01, 2001, in various capacities. In the year 2006, he became the compliance officer of Sunchan and continued till June 15, 2012. I have seen the submissions made by Riyaz Ismail Shaikh in his reply and find these to be more or less similar to the submissions made by Sunchan and Sunil Mansinghani. Riyaz Ismail Shaikh has argued that the allegations leveled against Sunchan and him were framed on the basis of findings of inspection in respect of the nine working days. Further, October 2008, was the most difficult period for the stock markets when there was a sudden collapse of the business and the utmost priority at that moment was to save the business and safeguard the interest of the clients.

These submissions of Riyaz Ismail Shaikh do not gel with the admitted position of Sunchan that the average shortfall in its margin since April, 2008 was 70%. According to Sunchan, it was accommodated by SMC in order to take bigger exposure compared to the collateral provided by it. As discussed in paragraph 8 above, I note that the violations proved as against Sunchan are serious in nature. This shows that the activities of Sunchan were not in compliance with the prevalent practice and the applicable provisions of law. Riyaz Ismail Shaikh being the Compliance Officer of Sunchan was required to act with utmost care as he was fully aware of the applicable rules and regulations.

- c. Riyaz Ismail Shaikh in his submissions has also argued that being an employee, he could have done nothing beyond reporting the discrepancies to the directors of Sunchan and it was up to them to take remedial actions. I have considered this submission of Riyaz Ismail Shaikh and

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note that nothing has been brought on record to show that he reported the discrepancies to the directors of Sunchan. The chronology of events and duration of his employment with Sunchan suggest that Riyaz Ismail Shaikh became party to the scheme of the directors and had decided to keep silent. Such acts of Riyaz Ismail Shaikh are clearly against the role specified for such specialized officer. I note that as per Regulation 18A(1) of the Broker Regulations, a compliance officer is responsible for monitoring the compliance with the relevant provisions of the SEBI Act, rules and regulations, notifications, guidelines, instructions, etc. and for redressal of investors' grievances. Further, as per Regulation 18A(2) of the Broker Regulations, the compliance officer is required to immediately and independently report to SEBI any non-compliance observed by him. However, the instant facts make it clear that Riyaz Ismail Shaikh has failed to comply with the said provisions and had acted in violation of the same.

12. Sunil Mansinghani in his reply has argued that he had sold his assets that were pledged to pay margins to SMC and banks. Kanchan Mansinghani has also argued that she had sold off all her properties in order to bring in money into Sunchan to pay off the bank overdraft of Sunchan and also to make payments to the clients of Sunchan. However, as the business of Sunchan had suffered and the earnings have become zero, the company and its directors could not clear the dues of the clients. Sunchan and Sunil Mansinghani have requested to clear the clients' dues from SMC, as Sunchan do not have any resources to pay the IPF of NSE and BSE, nor can they pay the clients.

Riyaz Ismail Shaikh has submitted that he had made himself present in all the grievance redressal forums conducted by the exchanges and submitted all the information required from time to time although with some delay in certain matters. He helped the clients of Sunchan in the arbitration matters before NSE and BSE by issuing ledgers and various other documents from time to time thereby avoiding any delays or troubles to its clients and exchanges.

The mitigating factors discussed by the noticees are of no relevance in the present proceedings as the same are not penal in nature. Further, the argument taken by Sunchan and Sunil Mansinghani that the clients' dues be cleared from SMC is of no relevance in the present proceedings as the same are in respect of the noticees named in the SCNs only. As regards the allegations made against SMC, I note that SEBI has initiated separate proceedings and the same have already been concluded.

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13. Having considered the above discussion, it is clear that Sunchan and its directors have failed to clear the dues of clients/ investors. As noted in the SCN, the claims of Sunchan's clients have been partially settled from the Investor Protection Fund (hereinafter referred to as 'IPF') of the respective stock exchanges. As per the details provided to Sunchan and its directors vide the SCNs dated June 30, 2011, an amount of ₹1,60,81,597.84 has been disbursed from the IPF of BSE. Further an amount of ₹2,34,33,233.74 has been disbursed from the IPF of NSE. From the SCNs, I also note that an amount of ₹4,27,48,132.17, was still due to the clients of Sunchan as such claims were not fully met out of IPF of the exchanges (i.e. claims admitted less the amount disbursed out of IPF). Sunchan and its directors have not disputed the said figures.

Therefore, before deciding upon the amount to be replenished and compensated let me note the current status of dues as per the last communication with stock exchanges. The same has been summarized in the table below:

TABLE A

Exchange	Particulars	Amount (₹)	No. of Clients
BSE	Payment from IPF	1,86,93,149	123
	Payment from the assets of Sunchan	77,76,265.72	23
	Total unpaid amount	1,68,47,272.87	36
NSE	Payment from IPF	2,58,32,823.72	141
	Payment from the assets of Sunchan	61,77,124.33	130
	Total unpaid amount	3,62,49,065.40	10

From the table A above and the communication from the stock exchanges, it is seen that certain additional claims have been admitted and payments have been released by BSE and NSE to the respective clients of Sunchan, after the issuance of SCN. Accordingly, there are certain differences in the amounts as detailed in the table A above and the SCNs issued to the noticees due to increase in the number of claimants.

14. In view of the foregoing, I, in exercise of the powers conferred on me in terms of Section 19 read with 11B and 11(4) of Securities and Exchange Board of India Act, 1992, hereby:
- a. restrain Sunchan Securities Limited [PAN: AAFCS 8953A], Mr. Sunil Mansinghani [PAN: AARPM 7113P], Ms. Kanchan Mansinghani [PAN: AAQPM 1032Q], Mr. Ashok Daswani, Mr. Surendra Gama Yadav [PAN: AAIPY 0498C] and Mr. Riyaz Ismail Shaikh [PAN: AAVPS 2375K] from buying, selling or dealing in securities market in any manner whatsoever or

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accessing the securities market directly or indirectly for a period of seven (7) years. The period of debarment already undergone by Sunchan Securities Limited, Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ashok Daswani, Mr. Surendra Gama Yadav and Mr. Riyaz Ismail Shaikh shall be set-off from the period of debarment as directed above.

- b. restrain Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ashok Daswani, Mr. Surendra Gama Yadav and Mr. Riyaz Ismail Shaikh from holding the position of Director or Compliance Officer in any listed company or being associated with any intermediary or entity registered with SEBI for a period of seven (7) years.
- c. direct Sunchan and its directors to replenish the Investor Protection Fund of BSE to the extent of ₹1,86,93,149 and Investor Protection Fund of NSE to the extent of ₹2,58,32,823.72, i.e. the amount disbursed from IPF towards the claims of investors of Sunchan as a stock broker.
- d. direct Sunchan and its directors to compensate investors to the extent their claims were not fully met out of IPF of ₹5,30,96,338.27 (₹1,68,47,272.87 + ₹3,62,49,065.40) i.e. the claim admitted less the amount disbursed out of IPF.
- e. Sunchan and its directors are jointly and severally liable to make the payments as directed in the sub-paragraphs (c) and (d) above, within 45 (forty five) days from the date of this order by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai. At this stage, I note that Sunchan, is in the process of liquidation and Official Liquidator has been appointed by the Hon'ble Bombay High Court vide order dated June 15, 2012. Hon'ble Bombay High Court vide its order dated January 21, 2014 has granted leave to Securities and Exchange Board of India under section 446 of the Companies Act, 1956 to proceed further in the present proceedings against Sunchan Securities Limited. Securities and Exchange Board of India is directed to take up the matter with the concerned Official Liquidator for the purposes of enforcing the directions as against Sunchan contained in the paragraph 14 (c) and (d) above.
- f. In case the aforesaid amounts are not paid within the specified time, Sunchan Securities Limited, Mr. Sunil Mansinghani, Ms. Kanchan Mansinghani, Mr. Ashok Daswani, Mr. Surendra Gama Yadav shall be restrained for a further period of ten (10) years from (i) buying,

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selling or dealing in securities market in any manner whatsoever, (ii) accessing the securities market, directly or indirectly and (iii) associating with any securities market intermediary or listed company in any manner or capacity, without prejudice to SEBI's right to enforce disgorgement.

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

DATE: April 23rd, 2014
PLACE: Mumbai



Prashant Saran

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA