

WTM/ AB / SEBI / MIRSD/ NRO / 10/ 2019-20
SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME
MEMBER

Order

Under Sections 11(4), 11B and 11D of the Securities and Exchange Board of India Act, 1992 read with Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 – In the matter of Allied Financial Services Private Limited (AFSPL)

Notice e No.	Entity Name	PAN No.
1	Allied Financial Services Private Limited	AAACA2020K
2	Mr Rajeev Kumar Asopa	AASPA3260C
3	Mr Lalit Agarwal	AFKPA9024P
4	Mr Rajendra Prasad Basia	AAEPB2709B
5	Mr Awanish Kumar Mishra	AGOPM7538H
6	Mr Jitendra Kumar Tiwari	ALBPT6629A
7	Money Mishra Financial Services	AAZFM1357R
8	Money Mishra Overseas Pvt. Ltd	AAJCM8612N
9	M/s Mutual Fund Digilocker	ABJFM9337L
10	Mr Pankaj Garg, Partner, M/s Digi locker	AERPG5388J
11	Mr Jitender Malhotra, Partner, M/s Digi locker	ALRPM2119G

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

1. SEBI had passed an ex-parte ad-interim order cum show cause notice against the aforesaid entities in the matter of Allied Financial Services Pvt. Ltd. (**‘AFSPL’**) on February 27, 2019 (hereinafter referred to as **‘the interim order’**) and subsequently a confirmatory order was also passed on May 17, 2019 (hereinafter referred to as **‘the confirmatory order’**).
2. IL & FS Securities Services Ltd. (**‘ISSL’**) preferred an appeal before Hon’ble Securities Appellate Tribunal (SAT) inter alia, praying for appropriate directions to SEBI to grant them a hearing and modify the interim order to

the extent it was prejudicial to their interests. The Hon'ble SAT vide its order dated May 15, 2019 directed SEBI that in the event ISSL applies for being heard for protection of its interest qua the interim order, the WTM of SEBI cannot deny the opportunity of it being heard. ISSL has vide representation to SEBI inter-alia seeking clarification on the impact of the observations and findings against AFSPL in the interim order. Further, vide letter dated June 8, 2019, ISSL also sought an opportunity of personal hearing in this regard.

3. An opportunity of personal hearing was granted to ISSL on June 17, 2019, however, ISSL sought an adjournment to June 19, 2017. Accordingly, personal hearing was held on June 19, 2017. The Ld Senior counsel appearing for ISSL has pointed out certain interpretational issues. Since SEBI has initiated the investigation in the matter and the fact finding is pending, in the interim ISSL has prayed that clarification be issued.

4. In the interim order dated February 27, 2019 the following observations/ directions were made:

"i. para4(o)(iv) -----If the above open positions are liquidated, the collateral available with clearing member ISSL which is securities worth Rs. 386 crores and funds worth Rs. 42.42 crores would be utilized to the extent of Rs. 354.95 crores and balance left would only be Rs. 73.42 crores. The member has used client securities and which needs to be returned, in that case there would be a short fall of Rs. 312.53 crores.

ii. para 8(c) The aforesaid notices are not to dispose of or alienate any assets whether movable or immovable or to create or invoke or release any interest or charge in any of such assets except with the prior permission of SEBI/NSE.

iii. para 8(e) Till further directions in this regard, the assets of the Notices mentioned at para 8 (c) of this order shall be utilized only for the purpose of payment of money and/ or delivery of securities, as the case may be, to the clients/investors under the supervision of the NSE."

5. I note that while passing the aforesaid observations/directions it was not the intention of SEBI to put any embargo on the collaterals

deposited by AFSPL with ISSL to meet its margin obligations. Regulation 44 of Securities Contracts (Regulation)(Stock Exchanges And Clearing Corporations)Regulations,2018 provides as under:

“44.The right of a recognised clearing corporation(s) to recover the dues from its clearing members, arising from the discharge of their clearing and settlement functions, from the collaterals, deposits and the assets of the clearing members, shall have priority over any other liability of or claim against the clearing members.”

As per the extant bye laws of the clearing corporation, clearing corporation shall have lien over the collaterals as against other dues of the clearing member. The same is fortified by the Honourable Supreme Court in the matter of Stock Exchange, Bombay Vs V.S.Kandalgaonkar and others decided on September 25, 2014inter alia, held

“that the lien processed by the stock exchange makes it a secured creditor. That being the case it is clear that whether the lien under Rule 43 is a statutory lien or is a lien arising out of agreement does not make much of a difference as stock exchange being a secured creditor, would have priority over government dues”.

In this context, reference to the stock exchange in the above judgement it may be mentioned that earlier the functions of clearing corporation was carried out though clearing house of stock exchange.

6. In view of the above, it is clarified that *the prohibition contained in para 8 (c) and para 8 (e) of the interim order was not extended towards the collaterals available with ISSL as provided by ASFPL to meet its margin obligations.*
7. Except the aforesaid clarification, all other observations/ directions contained in the interim order dated February 27, 2019 and confirmatory order dated May 17, 2019 shall continue.
8. This clarification shall not come in the way of ongoing investigation/proceedings by Economic Offences Wing, Delhi Police or any other agency or with regard to any claim or counter claims in respect

of dispute with regard to the alleged fraudulent/ un-authorised transfer of mutual fund units.

Sd/-

Place: Mumbai

Date: June 20, 2019

**ANATA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**