

**MCX STOCK EXCHANGE LTD.**  
**DISCIPLINARY ACTION COMMITTEE**  
**ORDER UNDER RULES 1 & 2 OF THE RULES OF MCX STOCK EXCHANGE LIMITED**

**1.0 BACKGROUND**

1.1 Mudra Bullions Pvt. Ltd. (MBPL) is a trading member on the Currency Derivatives (CD) segment of MCX Stock Exchange Ltd. ("the Exchange") and is registered with Securities and Exchange Board of India (SEBI) as a trading member on CD segment of the Exchange with registration No. INE261344936.

1.2 MBPL had originally applied for membership of the Exchange by an application dated September 6, 2008. Upon consideration of the same, the Exchange provisionally admitted MBPL as a member and forwarded its application to SEBI for registration on March 2, 2009 in terms of the SEBI (Stock Brokers and Sub-brokers Regulations, 1992). Subsequently, the Exchange learned that while MBPL's application was under consideration, SEBI passed an ex-parte ad-interim order dated April 23, 2009 ("SEBI 2009 Order") in the matter of Pyramid Saimira Theatre Ltd (PSTL) whereby several persons including the following persons were directed not to sell, deal in securities market including IPOs in any manner either directly or indirectly till further directions.

S. NO	NAME	BANK	BRANCH	BANK ACCOUNT NO.	NAME OF PROPRIETOR/DIRECTOR	PAN NO.
1	*****					
2	ADVANCE FINSTOCK PVT LTD.	AXIS BANK	PALANPUR, GUJARAT	256010200005289	ANAND HUNIA/POPATL AL SHAH/SANJAY HUNIA/RAJESH HUNIA, KARUL SHAH	
3-230	*****					

It will be seen from the above that Mr. Anand Hundia (mistakenly mentioned as Anand Hunia, as subsequently confirmed by confirmation order dated July 5, 2010) and Mr. Karul Shah were

barred in their capacity as directors of one Advance Finstock P. Ltd. (AFPL), which was found to prima facie have some role in funding certain transactions.

1.3 On June 15, 2009, SEBI wrote an email to the Exchange advising it to get confirmation from the two directors of MBPL, i.e. Mr. Karul Popatlal Shah and Mr. Anand Bhanwarlal Hundia, on whether SEBI has initiated / taken any action against the applicant directors Mr. Karul Popatlal Shah and Mr. Anand Bhanwarlal Hundia and also confirm whether they are / were associated in any way with Pyramid Saimira Theatre Ltd. The same day, the Exchange sent an email to MBPL advising them to submit the confirmation required by SEBI and forwarded the suggested format, which included space to disclose details in case any adverse action was taken against them. On the next day, MBPL submitted the undertakings of Mr. Karul P Shah and Mr. Anand B Hundia to the Exchange which were forwarded by the Exchange to SEBI on June 18, 2009. In the said undertakings Mr. Shah and Mr. Hundia declared that there was no adverse action whatsoever such as enquiry / adjudication (penalty imposed) / suspension / cancellation / prosecution / debarring from capital market, initiated / pending / completed against them or against MBPL by SEBI or any other authority / institution, either in the past or at present. Both of them also confirmed that they were not ever associated / connected in any capacity whatsoever, with PSTL. They further confirmed that MBPL is / was not ever associated with PSTL. It was specifically mentioned in their undertakings that they were fully aware that giving false declaration is an offense and can result in rejection of application or cancellation of registration. Since Mr. Hundia and Mr. Shah were debarred from dealing in the securities market by the *ex-parte* ad interim SEBI 2009 Order in the matter of PSTL at the point in time, these undertakings were false. However, neither the Exchange nor SEBI were aware of the same at that point.

1.4 Subsequent to forwarding of the undertakings by the Exchange, SEBI granted registration to MBPL on July 13, 2009 and MBPL started trading in the Exchange from September 1, 2009.

1.5 Apparently, Mr. Hundia and Mr. Shah made a representation against continuance of the ad interim SEBI 2009 Order against them and after considering the same, SEBI passed further interim order dated July 5, 2010 ("SEBI 2010 Order") confirming the directions issued inter alia against Mr. Shah and Mr. Hundia in the matter of PSTL.

1.6 On an appeal filed by Mr. Hundia and Mr. Shah and others challenging the SEBI 2010 Order, the Hon'ble Securities Appellate Tribunal (SAT) passed an Order dated June 7, 2011 ("SAT 2010 Order") staying the SEBI 2009 Order qua the appellants. The SAT clarified that the stay shall be without prejudice to the rights of SEBI to proceed in the matter and should not be taken as an expression of its view on the merits of the case. It also mentioned that the rights and conditions of both sides shall remain open. The Exchange came to know of the information set out in paragraphs 1.5 and 1.6 subsequently through examination of the respective orders of SEBI and SAT in the public domain.

1.7 It appears that SEBI is yet to pass the final order in the matter of PSTL upon completion of investigations.

## 2.0 SHOW CAUSE NOTICE AND HEARING:

2.1 It came to the notice of the Exchange inter alia through inspection of MBPL that Mr. Hundia and Mr. Shah were the same persons debarred in the SEBI 2009 Order. The Exchange accordingly issued a show cause notice dated July 20, 2011 to MBPL and its directors mentioning that furnishing of false undertakings amounted to misconduct under Rule 3(k) of Chapter V of the Rules of the Exchange and advising them to show cause as to why disciplinary action should not be taken against them under Rule 2. SEBI was also informed of the said position of the Exchange by a letter dated July 21, 2011.

2.2 MBPL replied to the show cause notice by its letter dated August 3, 2011 submitting inter alia as under:

- a) Factually MBPL was not connected or having any concern with PSTL; the main case in the PSTL was made out against one Mr. Nirmal Kotecha was over as his demat accounts freezed earlier were defreezed as per order passed by SAT. Hence nothing serious is currently pending in the matter.
- b) The SEBI order against Advance Finstock Pvt. Ltd. (AFPL) and its directors (*i.e. the SEBI 2009 Order*) was earlier stayed by the SAT.
- c) There were no dealings in securities market by their companies or any of their directors.
- d) The undertakings were given by the two directors in good faith since membership was applied in the name of MBPL and it was not connected with AFPL. The directors were also not connected or concerned with any of the activities of PSTL or Mr. Nirmal Kotecha

or his Group. Thus submission of undertakings was due to inadvertence and unintentional.

- e) They have asked for leniency in the matter as this is the first time that such mistake has happened. They also assured that such mistake will not happen in future. They also requested for a personal hearing.

2.3 MBPL was granted an opportunity of hearing before the Disciplinary Action Committee of the Exchange on October 18, 2011. Mr. Shah, the designated director of MBPL and signatory of one of the undertakings, appeared in person together with Mr. S.H. Bohra and Mr. R.C. Kanungo, Advocates. They made the following submissions during the hearings:

- a) That they were unaware of the SEBI prohibitions.
- b) That the prohibition was against different company AFPL and therefore the undertaking was given by mistake and inadvertently.
- c) The prohibition is only on dealing in stocks and shares.
- d) The membership was applied for in good faith.
- e) SEBI order (*i.e. SEBI 2009 Order*) is only a show cause notice and it has not attained finality considering on the merits of PSTL matter. Nothing survived in the PSTL matter as SAT had already exonerated them.
- f) The directors were hopeful of getting the PSTL matter resolved before SAT when the undertaking was given.
- g) This is the first lapse and a lenient view may be taken. They may be permitted to continue with their business.
- h) They reiterated their submissions made in reply dated August 3, 2011.

### 3.0 CONSIDERATION OF ISSUES

3.1 We have carefully considered the material on record including the replies filed and submissions made by MBPL.

3.2 We find that furnishing of undertakings to the effect that they were not barred from dealing in the securities market, when they directly were the subject of prohibition of SEBI is a grave matter. If they had given the correct declaration at that point of time, it is probable that the Exchange would not have allowed MBPL to retain its provisional membership or that SEBI might

have declined its application for registration, having regard to the fact that the two signatories to the undertakings were the only designated directors of MBPL.

3.3 The submissions of MBPL that they were unaware of the scope of SEBI prohibition or that they were under impression that SEBI prohibition operated only for transactions in stocks and shares cannot be accepted on a plain reading of ad interim order passed by SEBI. The order is quite unambiguous and we find that no rationale person could take the order to mean that it would operate only against AFPL or that it applied only to transactions in stocks and shares. The SEBI 2009 Order is further an ad interim *ex parte* order which came into force immediately after its passing. By no stretch of imagination could it be characterized as a mere show cause notice yet to attain finality, although the final paragraph of the SEBI 2009 Order said that the order is to be treated as show cause notice for the concerned parties to file their objections.

3.4 The fact that SEBI 2009 Order in the matter of PSTL was subsequently stayed by SAT would not in any manner go to show that the undertakings filed by Mr. Shah and Mr. Hundia were not false, as the SEBI prohibition was admittedly in force at the time when the undertakings were executed and submitted.

3.5 Whether or not Mr. Shah and Mr. Hundia were really involved in the PSTL matter is not for us to decide. The matter will be settled upon passing of final order by SEBI. Suffice it to note here that the charge of having filed false undertakings would not depend on the outcome of the PSTL matter.

3.6 Rule 3(k) of Chapter V of the Rules of the Exchange provide as follows:

**"Misconduct**

(3) A trading member shall be deemed guilty of misconduct for any of the following or similar acts or omissions namely:

(a) to (j) \*\*\*\*\*

(k) *False or misleading returns:* If it neglects or fails or refuses to submit or makes any false or misleading statement in its clearing forms or returns required to be submitted to the Stock Exchange under the Bye-laws, Rules and Regulations.

(l) to (m) \*\*\*\*\*

3.7 In light of the above discussions, it is abundantly clear that MBPL was guilty of misconduct, as contemplated in the above rule.

#### 4.0 DIRECTIONS

4.1 We note that rules 1 and 2 of Chapter V of the Rules of the Exchange, which are binding on the members of the Exchange, vest wide disciplinary power in us, to be judiciously exercised. We find that the false undertakings filed by Mr. Hundia and Mr. Shah go to the root of trading membership of MBPL. This would be clear on a reading of rule 16 of Chapter III of the Rules of the Exchange, which reads as follows:

"(16) The relevant authority may at any time from the date of admission to the trading membership of the Stock Exchange cancel the admission and expel a trading member if he has in or at the time of his application for admission to membership or during the course of the inquiry made by the relevant authority preceding his admission :

- (a) made any willful misrepresentation; or
- (b) suppressed any material information required of him as to his character and antecedents; or
- (c) has directly or indirectly given false particulars or information or made a false declaration."

4.2 Further, by virtue of rule 16 of Chapter V of the Rules of the Exchange, a trading member is responsible for all acts of its officials, agents and employees and accordingly MBPL cannot escape responsibility for the wrong undertakings filed by its designated directors, Mr. Hundia and Mr. Shah. In any case it was MBPL who had forwarded the undertakings of Mr. Hundia and Mr. Shah to the Exchange for onward transmission to SEBI.

4.3 On the other hand, though the fact of SAT in 2011 subsequently stayed the SEBI 2009 Order would not go to neutralize the misconduct of MBPL committed in 2009 while submitting the false declaration, it nevertheless would be a mitigating factor, as on the present date there is no prohibition effective against Mr. Shah and Mr. Hundia.

4.4 Having regard to the above, and having regard to the fact that Mr. Shah and Mr. Hundia the two designated directors as well as substantial shareholders and part of dominant promoter group of MBPL, we are of the considered view that it would be commensurate to order that MBPL be suspended from trading membership of the Exchange till SEBI finally decides the


PSTL matter qua Mr. Shah and Mr. Hundia. The suspension of trading membership would be reviewed by the Exchange subject to terms of the final order of SEBI.

4.5 We accordingly order in terms of the powers conferred upon us by Rules 1 and 2 read with 24 of Chapter V of the Rules of the Exchange. The suspension of membership shall take effect after three weeks from the date of passing of this order. In the meantime, MBPL is directed not to take any fresh positions on the Exchange and to close all its open positions within the said period of three weeks.

4.6 We further direct MBPL to furnish an undertaking to the Exchange within three weeks of this order declaring that neither they nor any of their Directors shall directly or indirectly apply for membership of the Exchange during currency of the suspension or trade on the Exchange directly or indirectly.

Dated on 9<sup>th</sup> day of November, 2011.

  
ASHA DAS

  
B.D. SUMITRA

  
PREM RAJANI

Certified True Copy

For MCX-Stock Exchange Ltd.

  
Company Secretary