

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN RESPECT OF -

NOTICEE	M/s. IL & FS FINANCIAL SERVICES LIMITED UNDERWRITER [SEBI REGN NO. INU000001298]
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BACKGROUND -

1. M/s. IL & FS Financial Services Limited (“IFIN / Noticee”) is a SEBI registered Underwriter.
2. Serious Fraud Investigation Office (SFIO) had conducted an investigation into the affairs of Infrastructure Leasing & Financial Services Limited (IL&FS) and its subsidiary companies responsible for the credit crisis. Accordingly, SFIO had submitted its report dated May 28, 2019 (the Report) to Ministry of Corporate Affairs (MCA) and subsequently, the Report was forwarded to SEBI by the MCA to ascertain, *inter alia*, whether the Noticee, which is a 100% subsidiary of IL&FS, was qualified to be a fit and proper person to continue as a SEBI registered intermediary. The Report has pointed out various irregularities, showing apparent violation of various provisions of the Indian Penal Code (IPC), Companies Act, 1956, the Companies Act, 2013 and the RBI Act, 1934 and the regulations made thereunder, leading to raising of integrity issues in respect of the Noticee. It was also noted that SFIO had already filed a charge sheet against the Noticee and the same has been admitted in the session court of Mumbai.

3. In view of the above, SEBI has initiated proceedings under the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") against the Noticee for alleged violation of the provisions of Regulation 6(f) read with 6A of the SEBI (Underwriters) Regulations, 1993 ("**Underwriters Regulations**") read with the provisions of Schedule II of the Intermediaries Regulations, which pertain to fulfilment of fit and proper person criteria by a registered underwriter. Accordingly, SEBI appointed a Designated Authority (DA) in the matter to enquire into the aforesaid alleged violations under Section 12(3) of the SEBI Act read with Regulation 23(a) of Intermediaries Regulations and Regulation 25 of the Intermediaries Regulations. The DA issued a show cause notice to the Noticee under Regulation 25(1) of the Intermediaries Regulation. Thereafter, upon a consideration of the facts before him and after granting an opportunity of hearing, the DA submitted his report dated May 18, 2020, under Regulation 27 of the Intermediaries Regulations, concluding that the Noticee was no longer a fit and proper person as required under Regulations 6(f) and 6A of the Underwriters Regulations read with the provisions of Schedule II of the Intermediaries Regulations. Further, the DA in his report recommended that the certificate of registration of the Noticee be cancelled.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING -**

4. A Show Cause Notice dated July 06, 2020 ("**post-enquiry SCN**") under Regulation 28(1) of the Intermediaries Regulations was issued by SEBI enclosing therewith a copy of the report of the DA and calling upon the Noticee to show cause as to why the action as recommended by the DA or passing of any other direction, as considered appropriate by the Competent Authority, should not be taken against it in terms of Regulation 28(2) of the Intermediaries Regulations.

5. Pursuant to receipt of post-enquiry SCN, the Noticee vide email dated August 20, 2020 replied to the post-enquiry SCN. The Noticee was granted personal hearing before me on September 18, 2020 which was attended by Mr. Kaushik Modak (CEO of IFIN) and others. During the personal hearing, the Noticee reiterated its submissions made earlier. Subsequently, the Noticee submitted written submissions dated September 25, 2020.
6. The Noticee vide email dated August 20, 2020 and letter dated September 25, 2020 has submitted *inter alia* the following:
  - (a) The Union of India acting through the MCA had initiated proceedings against IL&FS and its group companies under Section 241(2)(k) of the Companies Act, 2013 on the grounds *inter alia* that the erstwhile board of IL&FS had *prima facie* mismanaged the affairs of IL&FS. Pursuant to the said Proceedings, the Hon'ble National Company Law Tribunal (NCLT), Mumbai Branch, suspended the erstwhile board of directors of IL&FS and appointed new directors as recommended by the Union of India on the board of IL&FS vide its order dated October 01, 2018, October 03, 2018 and December 21, 2018. Further, vide the order passed by the NCLT on October 09, 2018, the new board was empowered to replace the directors of subsidiary companies of IL&FS (which also include IFIN / Noticee). Accordingly, the board of directors of IFIN were reconstituted on October 26, 2018.
  - (b) The Noticee had originally obtained registration as an underwriter on January 28, 2009. Subsequently, the Noticee had been granted a permanent registration in terms of Regulation 8A of the Underwriters Regulations vide SEBI letter dated February 06, 2014. The Noticee has not undertaken any underwriting business since January

28, 2009 and therefore, the registration obtained by it under the Underwriters Regulations was never effectively operationalized.

- (c) IFIN has never undertaken any business pursuant to the Underwriting License and as such, the newly constituted board of directors of IFIN surrendered the Underwriting Licence on June 04, 2019 vide Board Resolution dated May 15, 2019. Accordingly, a letter dated June 04, 2019 was sent to SEBI, which was followed up by a request letter dated November 14, 2019 to SEBI requesting for confirmation on the surrender of the Underwriting License.
- (d) The investigation conducted by the statutory agencies has no bearing on the Underwriting License issued to IFIN as IFIN has never done any business or solicited any client / customer for carrying out any business activities permitted under the said license.
- (e) The Hon'ble National Company Law Appellate Tribunal (NCLAT) vide its order dated October 15, 2018 (Moratorium Order), granted a stay on institution or continuation of suits or any other proceedings by any party or person against IL&FS and its group companies, which include the Noticee. Subsequently, the Moratorium Order was confirmed by the Hon'ble NCLAT vide order dated March 12, 2020.
- (f) The IFIN 's new board is working in furtherance of the Government mandate for the benefit of the public at large. At this stage, any finding by SEBI that the Noticee is not fit and proper person will have unintended consequences for the Noticee.

## CONSIDERATION AND FINDINGS -

7. I have examined the facts of the case, the charges against the Noticee and the submissions of the Noticee in respect of the same. I note that the instant proceedings have been initiated against the Noticee on the basis of report of SFIO which brought out apparent irregularities on the part of the Noticee. As per Regulation 9A(1)(e) of the Underwriters Regulations read with Section 12(1) of the SEBI Act, an underwriter has to abide by the regulations made under the SEBI Act in respect of the activities carried on by it as an underwriter and it cannot buy, sell or deal in securities except, and in accordance with the conditions of the certificate of registration obtained from SEBI. In this regard, I note that the fit and proper person requirements have to be met on a continuous basis, since compliance with the same is mentioned as one of the conditions for grant of registration under sub-regulation (f) of Regulation 6 of the Underwriters Regulations. It is needless to reiterate that SEBI is empowered to take suitable action as it may deem fit, including suspension and cancellation of registration in the event the intermediary fails to comply with the said requirement.
8. Having observed as above, before proceeding to decide whether, in light of the SFIO's report, the Noticee remains compliant with the fit and proper person criteria or not, I deem it important to highlight the following facts from the records:
  - (a) The Noticee, though registered as an underwriter with SEBI since January 2009, has never undertaken assignments in such capacity since the grant of registration itself.
  - (b) The Noticee vide letter dated June 04, 2019 had itself made a request to SEBI for surrendering its certificate of registration as an underwriter, whereas the instant

proceedings have been initiated against the Noticee on November 20, 2019, which is much after the said request was received by SEBI.

9. Having considered the above-mentioned facts and circumstances, I am of the view that since the Noticee has never undertaken activities as an underwriter from the date of grant of certificate of registration and had submitted a request to SEBI for surrender of certificate of registration prior to initiation of the proceedings, no meaningful purpose would be served by continuing with the instant proceedings against the Noticee. Hence, without going into the merit of the issue at hand, I am inclined to drop the instant proceedings against the Noticee.

**ORDER -**

10. In view of the above, I, in exercise of powers conferred on me under Section 12 (3) read with Section 19 of the SEBI Act and Regulation 28(2) of the Intermediaries Regulations, and upon consideration of the facts and circumstances as above, hereby dispose of the instant proceedings without issuing any direction against the Noticee.

**PLACE: MUMBAI**

**DATE: OCTOBER 23, 2020**

**G. MAHALINGAM**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**