

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AK/BS/2023-24/25882)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, IN RESPECT OF

NJ ASSET MANAGEMENT PRIVATE LIMITED
(PAN – AACCN2030J)

IN THE MATTER OF NJ ASSET MANAGEMENT PRIVATE LIMITED

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of NJ Asset Management Private Limited (hereinafter referred to as "**Noticee**" or "**NJAMPL**"), registered with SEBI as Portfolio Manager under SEBI (Portfolio Managers) Regulations, 2020 (hereinafter referred to as '**PM Regulations**'). The period of inspection was from April 01, 2020 to December 31, 2021 (hereinafter referred to as "**Inspection period**" or "**IP**"). It was found during inspection that Noticee accepted investment from clients, without meeting the minimum investment criteria, as prescribed in PM Regulations.
2. NJ Asset Management Private Limited got registered with SEBI as a Portfolio Manager bearing SEBI Registration Number PM/INP000003518 on December 22, 2009. It was earlier known as "NJ Advisory Services Private Limited". SEBI Registration Certificate bearing Registration No. PM/INP000003518 was obtained in new name on December 24, 2020.

APPOINTMENT OF ADJUDICATING OFFICER

3. Upon being satisfied that there were sufficient grounds to inquire and adjudicate upon the violation of provisions of the SEBI Act by the Noticee, SEBI, in exercise of powers u/s 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules**”), r/w section 19 of the SEBI Act appointed undersigned as the Adjudicating Officer (hereinafter referred to as the “**AO**”), vide order dated March 06, 2023, to inquire into and adjudge u/s 15-I r/w section 15 HB of SEBI Act, the alleged violation of Regulation 23 (2) of PM Regulations by Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice ref. no. EAD-6/AK/BS/12238/1/2023 dated March 24, 2023 (hereafter referred to as **SCN**) was issued to the Noticee in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules, 1995 r/w Section 15-I of SEBI Act, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed under the provision of Section 15 HB of the SEBI Act for the alleged violation. I note that SCN issued to the Noticee was duly served by Speed Post Acknowledgement Due and by e-mail.
5. Vide hearing notice dated April 05, 2023, Noticee was granted an opportunity of hearing on April 19, 2023. Mr. Neeraj Choksi, Director, Mr. Rajiv Shastri, CEO, Mr. Vineet Nayyar, COO and Ms. Punam Upadhyay, Chief Compliance officer & Company Secretary attended the hearing and made submissions before me on the scheduled date of hearing.
6. The allegation levelled against Noticee in the SCN is that Noticee accepted initial investment, without meeting the minimum investment criteria as prescribed in PM Regulations, from its clients in 13 instances. Further, Noticee

accepted additional funds below regulatory threshold from five (5) existing clients in six (6) instances. The same allegedly resulted in violation of provisions of Regulation 23 (2) of PM Regulations by Noticee. The aforesaid alleged violation of Regulation 23 (2) of PM Regulations, if established, makes the Noticee liable for monetary penalty u/s 15 HB of the SEBI Act.

7. Noticee vide reply dated April 01, 2023 and April 20, 2023, *inter alia*, submitted as under:

Fresh onboarding:

- a) *The revised minimum amount threshold came into effect through gazette notification on January 21, 2020. In our process, the Investor signs the PMS onboarding documents including the agreement and sends it to us. Only when we receive the physical Power of Attorney and Fees and Charges Schedule, duly signed by the investor, that we onboard the investor.*
- b) *As per our understanding, all clients who entered into valid agreements with us before January 21, 2020, were contractually eligible for the regulatory threshold applicable at the time of their signing. In all 13 instances highlighted during the inspection, the agreement was signed by the investors before January 21, 2020 and as such, these investors were contractually eligible for the lower threshold.*
- c) *We humbly submit that as on 21st January 2021, we served 2,833 investors accounting for Rs. 1,874 cr in assets under management (AUM). These 13 investors totaling Rs. 3.95 cr in AUM formed a very small portion of our business and we did not stand to gain materially by their addition. We believe that our interpretation was in the best interest of the investors.*
- d) *Going forward, we have changed our process to ensure that all regulatory changes are taken into account from the date they become effective irrespective of the date of agreement with our investor.*

Top – up transactions

- e) 6 instances of top-up investment below the regulatory threshold happened when the nation was locked down for the COVID-19 pandemic. The processing error was due to the work from home situation and team absences (due to infections) that prevailed at the time which caused considerable disruption.
- f) We humbly submit that we served 3,126 investors as on 31st May 2021 and processed more than 7,000 top-up transactions from January 2020 to December 2021. With a total AUM of Rs. 2,365 cr, these 6 transactions totalling Rs. 30 lac formed a very small part of our business and we did not stand to gain materially by their acceptance.
- g) We further wish to submit that to avoid such instances in the future, we have put in place system level controls and strengthened our pre-audit process and work-flow.
- h) Vide reply dated April 20, 2023, Noticee reiterated that submissions made earlier vide reply dated April 01, 2023 and provided the following information:

Sr no	Client Code	PAN	Investment amount	Date of E-stamp	Date of Investor's Esign	Fund realisation date
1	N000147	BDQPP6732G	25,25,000.00	15-Jan-2020	15-Jan-2020	21-Jan-2020
2	S000501	AABPG5567H	25,12,500.00	08-Jan-2020	09-Jan-2020	22-Jan-2020
3	A000329	AFLPK4992H	25,00,000.00	03-Jan-2020	02-Jan-2020	23-Jan-2020
4	M000211	AKUPS7479K	25,00,000.00	15-Jan-2020	17-Jan-2020	23-Jan-2020
5	M000212	BIHPK0264N	25,00,000.00	12-Dec-2019	12-Dec-2019	23-Jan-2020
6	P000222	GZZPS8068E	25,00,000.00	21-Dec-2019	01-Jan-2020	23-Jan-2020
7	C000053	ABAPU8323M	30,00,000.00	15-Jan-2020	15-Jan-2020	24-Jan-2020
8	K000175	ADLPM8784B	25,25,000.00	11-Jan-2020	21-Jan-2020	24-Jan-2020
9	V000166	AAKPV3405A	25,00,000.00	21-Jun-2019	19-Aug-2019	24-Jan-2020
10	U000032	AGUPK5427D	25,00,000.00	08-Jan-2020	13-Jan-2020	27-Jan-2020
11	V000167	AABPO5926A	25,25,000.00	17-Jan-2020	20-Jan-2020	27-Jan-2020
12	P000223	ABJPJ4249G	39,00,000.00	17-Jan-2020	8-Jan-2020	01-Feb-2020
13	H000084	AGPPK7309B	25,00,000.00	21-Nov-2019	21-Nov-2019	05-Feb-2020

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:
- I. Whether the Noticee has violated Regulation 23 (2) of PM Regulations?
 - II. Does the violation, if any, attract monetary penalty u/s 15 HB of the SEBI Act?
 - III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

Issue I. Whether the Noticee has violated Regulation 23 (2) of PM Regulations?

9. Before moving forward, it is pertinent to refer to the relevant provision which is alleged to have been violated. The said provision is reproduced hereunder:

PM Regulations

General responsibilities of a Portfolio Manager

23 (2) The portfolio manager shall not accept from the client, funds or securities worth less than fifty lakh rupees:

Provided that the minimum investment amount per client shall be applicable for new clients and fresh investments by existing clients:

Provided further that subject to appropriate disclosures in the disclosure document and the terms agreed between the client and the portfolio manager, the requirement of minimum investment amount per client shall not apply to an accredited investor:

Provided further that the requirement of minimum investment amount per client shall not apply to the Co-investment Portfolio Manager:

Provided further that existing investments of clients, as on the date of notification of the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, may continue as such till maturity of the investment or as specified by the Board.

10. Noticee got registered with SEBI as a Portfolio Manager bearing SEBI Registration Number PM/INP000003518 on December 22, 2009. It was earlier known as “NJ Advisory Services Pvt. Ltd.”. SEBI Registration Certificate bearing Registration No. PM/INP000003518 was obtained in new name on December 24, 2020. Other SEBI Registration details of Noticee are given below:

Name of the associate/ subsidiary/ associate company	Type of intermediary	SEBI Registration Number, if applicable	Relationship (associate/ subsidiary/ associate company)	Nature of business
NJ India Invest Private Limited (Parent Company)	i) Stock Broker (BSE, NSE and ICEX) ii) Depository Participant (CDSL and NSDL) iii) Mutual Fund Distributor iv) Point of Presence (PFRDA/NPS)	INZ000213137 (Dec 24, 2018) IN-DP-14-2015 (Jan 27, 2015)	Parent Company	Financial Services
NJ Mutual Fund	Mutual Fund	MF/076/21/02	Entity under same Management. NJ Asset Management Private Limited is also an AMC to NJ Mutual Fund.	Financial Services

11. Details of shareholders:

Sr. no.	Names of the Shareholders	No. Equity Shares	% age to the total
1	Mr. Niraj Ravindra Choksi	5,000	0.67
2	Mr. Jignesh Desai	5,000	0.67
3	NJ India Invest Private Limited	7,35,593	98.66
	Total	7,45,593	100

12. Details of clients:

Type of Service availed	No. of clients
Discretionary	3599
Non-Discretionary	0
Total	3599

13. Details of the Directors:-

Name of the Director / partner	Designation	Date of appointment	PAN	DIN
Mr. Niraj Choksi	Director	21/10/2005	AAHPC0477G	00335569
Mr. Rajiv Shastri	Director and Chief Executive Officer	01/02/2021	AAXPS0120N	02143422
Gen. Bikram Singh	Independent Director	09/10/2020	AIDPS7498H	07259060
Mr. Imtiyaz ahmed Peerzada	Independent Director	09/10/2020	ACNPP4754F	08905032

14. I note that PM Regulations were notified on January 16, 2020 and the same were published in the Gazette of India on January 21, 2020. It was noted that the Noticee had accepted new clients with investments less than rupees fifty lakh and also accepted fresh investments from existing clients whose post-additional inflow was less than rupees fifty lakhs.

15. I note that in the following thirteen (13) instances since January 16, 2020, the Noticee accepted initial investment of less than Rs. 50 (fifty) lakhs from its clients;

Sr. no.	Client Code	PAN	Amount (Rs.)	Date of receipt of funds
1	N000147	BDQPP6732G	25,25,000	21-Jan-20
2	S000501	AABPG5567H	25,12,500	22-Jan-20
3	A000329	AFLPK4992H	25,00,000	23-Jan-20
4	M000211	AKUPS7479K	25,00,000	23-Jan-20
5	M000212	BIHPK0264N	25,00,000	23-Jan-20
6	P000222	GZZPS8068E	25,00,000	23-Jan-20
7	C000053	ABAPU8323M	30,00,000	24-Jan-20
8	K000175	ADLPM8784B	25,25,000	24-Jan-20
9	V000166	AAKPV3405A	25,00,000	24-Jan-20
10	U000032	AGUPK5427D	25,00,000	27-Jan-20
11	V000167	AABPO5926A	25,25,000	27-Jan-20
12	P000223	ABJPJ4249G	39,00,000	01-Feb-20
13	H000084	AGPPK7309B	25,00,000	05-Feb-20

16. In addition to the above, I note that Noticee accepted additional funds from five (5) existing clients in six (6) instances, wherein the post-additional inflow balance was less than Rs. 50 (fifty) Lakhs. The details are as under:-

Sr.no.	Client Code	AUM as on Jan 16, 2020	Top-up date	Top-up amount	AUM before Top-up
1	P000163	26,98,844	12-Jun-2020	5,00,000	26,74,411
2	S000292	32,50,287	12-Jun-2020	5,00,000	29,95,656
3	J000101	26,36,354	25-Jun-2020	5,00,000	26,50,695
4	N000115	26,31,561	25-Jun-2020	5,00,000	26,45,800
5	M000135	28,13,457	10-Aug-2020	5,00,000	29,57,249
6	M000135	28,13,457	13-Aug-2020	5,00,000	34,72,222

17. Noticee in its reply dated April 01, 2023 and April 20, 2023 contended that revised minimum amount threshold came into effect through gazette notification on January 21, 2020. It was also submitted in reply that 13 instances, as alleged in the SCN, clients were on –boarded considering the fact that contracts were already signed and executed before the regulatory changes became effective.

18. I note that PM Regulations were notified on January 16, 2020. Regulation 2 of PM Regulation states that these regulations shall come into force on the date of their publication in the Official Gazette. I note from the available records that said regulations were published in the official Gazette on January 21, 2020. Further, I note from the information/data provided by Noticee that “Funds realization date” in respect of 13 instances as alleged in the SCN, is on or after January 21, 2020 i.e. date of Gazette publication. Therefore, I am of the view that Noticee should have complied with the new regulatory minimum investment criteria before accepting investment from clients. Noticee’s contention that contracts with clients were signed and executed before the regulatory changes became effective is not acceptable, as the agreement cannot be executed in violation of applicable provisions.

19. Further, with respect to 6 instances of top-up investment without meeting the minimum investment criteria, Noticee did not provide any satisfactory explanation except stating that such lapses happened due to disruption caused

by nationwide locked for curtailing the Covid-19 pandemic and processing error was due to work from home situation and operational difficulties faced during pandemic period. Noticee also submitted that alleged number of instances and amount involved in those instances, formed extremely small portion of its asset under management (AUM). I find that this contention of Noticee is devoid of merit as Noticee has violated the provisions of PM Regulations as brought out in the SCN and Noticee failed to provide satisfactory reasons for committing non-compliance of PM Regulations.

20. From the foregoing paragraphs, it is conclusively established that Noticee had failed to comply with minimum investment criteria as prescribed under Regulation 23 (2) of PM Regulations.

Issue II. Does the violation, if any, attract monetary penalty u/s 15A(a) of the SEBI Act?

21. In light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated the provisions of Regulation 23 (2) of PM Regulation.
22. Thus, it is clear that the Noticee has failed to comply with Regulation 23 (2) of PM Regulations. I find that Noticee is liable for monetary penalty u/s 15HB of SEBI Act. The contents of the said provision of law is reproduced herein below:

SEBI Act, 1992

Penalties and Adjudication

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

23. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:-

15J – Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

24. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the non-compliance committed by Noticee, is not available. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violation by the Noticee. With respect to repetitive nature of default by Noticee, I note that deficiency letters were issued to Noticee twice in past for lapses found during inspections.

ORDER

25. Considering all the facts and circumstances of the case and exercising the powers conferred upon me u/s 15-I of the SEBI Act r/w rule 5 of the SEBI

Adjudication Rules, I hereby impose the following penalty on the Noticee u/s 15HB of the SEBI Act:

Name of Noticee	Provisions Violated	Penalty
NJ Asset Management Private Limited (PAN – AACCN2030J)	Regulation 23 (2) of PM Regulations	Rs. 1,00,000/- (Rupees One Lakh only)

I find that the said penalty is commensurate with the violation committed by the Noticee in this case.

26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
28. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: April 24, 2023

AMIT KAPOOR

ADJUDICATING OFFICER