Before the Member and Core Settlement Guarantee Fund Committee
("MCSGFC"/"Committee")
of
National Stock Exchange of India Limited
Exchange Plaza, Bandra-Kurla Complex, Bandra East, Mumbai – 400 051
held on July 13, 2022

In the matter of the Trading Member – M/s. Samco Securities Limited

CORAM

Ms. Mona Bhide	- Chairperson
Ms. Anuradha Rao	- Committee Member
Mr. K Narasimha Murthy	- Committee Member
Mr. Ranganayakulu Jagarlamudi	- Committee Member

ALSO PRESENT

Ms. Priya Subbaraman	- Chief Regulatory Officer
Mr. Suresh Nair	- Vice President- Regulatory – Enforcement

BACKGROUND

1. **M/s Samco Securities Limited** ("**Samco**") is a Trading Member registered with the National Stock Exchange of India Limited ("**NSEIL**"/"**Exchange**") and enabled for trading in the Capital Market ("**CM**") segment since November 1994, Futures and Options ("**F&O**") segment since August 2004, and Currency Derivatives ("**CD**") segment since September 2008.

2. The Exchange received an email from its Trading Member, M/s. RKSV Securities India Private Limited ("**RKSV**") on June 21, 2021, alleging that Samco was in violation the Code of Advertisement. The alleged violations were as under:

   a. Samco released two advertisements which are built upon and copied from the advertisements of Upstox (a product of RKSV). The advertisements of Upstox were approved by the Exchange and are live on all medium since the past two months.

   b. Samco made an exaggerated claim of being 'No. 1 equity stockbroker in India' on its website.

3. Upon verification of the allegations made by RKSV, the Exchange issued a letter dated June 24, 2021 ("**LO**"), to Samco seeking an explanation for the observed violation of the applicable regulatory provisions. Samco vide its email dated July 9, 2021, replied to the LO.

4. The matter was placed before the Internal Committee of the Exchange in its meeting held on November 9, 2021. Upon considering the submissions of Samco, the Internal Committee of the Exchange referred the matter to MCSGFC for appropriate directions and opined that Samco be granted with an opportunity of a personal hearing before the MCSGFC.

OBSERVATIONS/ALLEGED VIOLATIONS

5. The observation/violation mentioned in the LO issued by the Exchange, are summarized hereunder:

   5.1. Non-adherence to the Exchange's Code of Advertisement

REGULATORY PROVISIONS

6. At the outset, it is appropriate to refer to the relevant regulatory provisions violated by Samco; extracts of which are reproduced below:

   6.1. **Non- adherence to the Exchange's Code of Advertisement**

      a. Exchange Circular No. NSE/COMP/33643 dated November 16, 2016

         1.4. Advertisement/Material shall not contain:

            f. Any statement designed to exploit the lack of experience or knowledge of the investors.

            g. Any slogan that is exaggerated or unwarranted or slogan that is inconsistent with or unrelated to the nature and risk and return profile of the product.

            i. Any statement which directly or indirectly discredits other advertisements or Stock Broker or make unfair comparisons.

k. Superlative terms, such as best, no. 1, one of the best, among market leaders, etc. unless such term is provided by an entity independent of the Stock Broker and its affiliates, and whose services are not procured by the Stock Broker or any of its affiliates to assign the Stock Broker such term.

1.5. Compliance and Other Requirements:

a. Prior approval for the advertisement/material to be obtained from the Stock Exchange before issue.

b. Exchange Circular No. NSE/COMP/43373 dated January 30, 2020

3. What types of Advertisements/Publications/communications will necessitate Prior Approval from Exchange?

Clarification: Any form of Advertisements/Publications, as given below, will require Exchange PRIOR approval:

a. Any content on Member's website/Member's own social media platform, including but not limited to Facebook page/Instagram/Twitter Accounts etc., that promotes products/services/brokerage plans etc. Further, any such content which amounts to the solicitation for account opening, including brand promotion.

d. Any display of awards received by Member from third party, Member's mobile application promotion

PREVIOUS MCSGFC PROCEEDINGS

7. The Exchange placed the matter before the Committee on two previous occasions as under: -

7.1. MCSGFC meeting held on January 24, 2022

The Exchange vide an email dated January 18, 2022, granted Samco an opportunity of a personal hearing before the Committee in its meeting scheduled on January 24, 2022. Samco vide its email dated January 21, 2022, sought adjournment on the

ground that its concerned staff members are working from home and the key persons/family members of key persons are suffering from Covid-19/other diseases and are therefore in isolation. The Committee acceded to Samco's request for adjournment. The Exchange vide its email dated January 27, 2022, informed Samco accordingly.

7.2. MCSGFC meeting held on June 27, 2022

The Exchange vide its email dated June 21, 2022, granted Samco with an opportunity of a personal hearing before the Committee in its meeting scheduled on June 27, 2022. Samco vide its email dated June 24, 2022, sought adjournment on account of the unavailability of both of its directors. The Committee acceded to Samco's request for adjournment while directing that no further adjournment will be granted to Samco. The Exchange vide its email dated June 27, 2022, informed Samco accordingly.

PRESENT PROCEEDINGS BEFORE MCSGFC

8. The Exchange vide its email dated July 6, 2022, granted Samco with an opportunity of a personal hearing before the Committee in its meeting scheduled on July 13, 2022. On behalf of Samco, Mr. Mahesh Morbia (Director), Mr. Nilesh Sharma (Vice President-Operations), and Mr. Navneet Pareek (Compliance Manager) appeared before the Committee and reiterated the submissions made in the written submissions.

CONSIDERATION AND FINDINGS

9. The observations/violations, reply of Samco, and the findings of the Committee are as under:

9.1. Non- adherence to the Exchange's Code of Advertisement

9.1.1. The observations of the Exchange are as under:

a. Exchange verified the advertisement released by Samco vis-à-vis the advertisement of RKSV. Upon verification, the Exchange observed that two advertisements published by Samco imitated the concept of the advertisements published by another Trading Member viz. RKSV and built upon it in a manner that directly or indirectly discredits RKSV, its

advertisements and makes unfair comparisons, thereby violating the Code of Advertisement.

b. The Exchange scrutinized the website of Samco. Upon scrutiny, the Exchange observed that Samco mentioned superlative terms viz. "Samco is the No. 1 equity stockbroker in India" on its website without seeking the prior approval of the Exchange, thereby violating the Code of Advertisement.

9.1.2. In response to the LO, Samco submitted as under:

a. ***Discrediting other advertisements or Stock Brokers or making unfair comparisons***

Lack of the Exchange's jurisdiction

i. The LO issued by the Exchange contains screenshots of frames from advertisements released by Samco and RKSV and alleges 'imitation' of visuals. However, the regulatory jurisdiction of the Exchange does not extend to adjudication of issues pertaining to alleged 'imitation' of visuals. At best, such claims are comparable to the claims pertaining to intellectual property rights (which too it is not) and the regulatory purview of the Exchange is limited to ensuring dealings by its Trading Members *in lieu* of protection of the investors' rights.

ii. It is apparent from the fact that a) the Exchange's Code of Advertisement does not contain a reference to violations arising from such alleged imitation of visuals, and b) the LO issued by the Exchange does not quote any provision other than the Exchange's Code of Advertisement. Thus, the allegations in the LO fall beyond the regulatory purview of the Exchange and shall be disregarded.

No link between material and charge

It is trite law that all material particulars and the exact connection between the material relied upon, and the allegation made, ought to be provided to the party called upon to respond to the charges. In the instant case, there is no link or connection between the screenshots annexed to the LO and the alleged violation of the Exchange's Code of Advertisement. The

absence of such a link or connection in the LO issued by the Exchange demonstrates the fact that no such link or connections exists.

No discrediting or unfair comparison

i. A few stray visuals cannot lead to the inference of discrediting or unfair comparison, as alleged. The entire narrative of the advertisement ought to be considered for such inferences. The products, script, narrative, cast, screenplay, taglines, motifs, approach, nature of the product, registration, product function, service performed, target audience, branding of the product, cast, screenplay, dialogue, script, storyline, tagline, slogan, and core message conveyed by the advertisements released by Samco and RKSV are different.

ii. Samco's advertisements do not refer, mention or dispute RKSV's product or advertisement, in any manner. Thus, the advertisements do not lead to discredit or comparison between Samco and RKSV – whether fair or unfair.

iii. There are some fundamental differences between the products advertised by the Samco and RKSV as follows: - a) The narrative of RKSV's advertisements promotes easy access to investors through its application, while Samco's advertisements promote access to curated research ideas and recommendations; b) Samco's advertisements *inter alia* pertain to research provided by Samco under the SEBI (Research Analysts) Regulations, 2015 which is distinct from the registration under the Stock Brokers Regulations. The purview of activities undertaken by a Research Analyst and a Trading Member are distinct. Since, RKSV is not registered as a Research Analyst, it cannot offer research services as advertised by Samco's advertisement.

iv. If viewed holistically, the advertisement released by Samco does not intend to discredit or unfairly compare RKSV or its product. Allegedly similarity between the two visuals does not lead to an inference of 'discrediting' or 'unfair comparison'.

Approval of the Exchange

i. Samco released the advertisement pursuant to approvals obtained from various stock exchanges such as the National Stock Exchange, Bombay Stock Exchange, Multi Commodity Exchange of India Limited and the Metropolitan Stock Exchange of India Limited. Each of the stock exchanges reviewed the advertisement in detail and approved the same.

ii. The Exchange approved the advertisement released by Samco after a few rounds of discussions and queries. The Exchange would have withheld the approval if 'imitation', 'derisiveness', 'discrediting' or 'unfair comparison' were observed. The Exchange's approval of the advertisement substantiates Samco's submissions.

No intellectual property rights in the visuals

i. RKSV does not have intellectual property rights pertaining to the visuals in the advertisement as established by various courts of law. In the absence of such rights, no regulatory action can be taken against Samco based on the unsubstantiated allegations. Further, the claim being outside the regulatory purview of Exchange, cannot be adjudicated by the relevant authority of the Exchange.

ii. For instance, for RKSV to allege violation of copyright of its advertisements, it shall demonstrate that Samco duplicated its original physical copy. As per the decision of the Hon'ble Bombay High Court in Star India Private Limited v. Leo Burnett (India) Private Limited (decided on September 24, 2002), an independently shot film does not even afford copyright over the original.

iii. Further no copyright or any other intellectual property rights vest in costumes of actors or locations. In this regard, Courts have ruled that if: i) there are material and broad dissimilarities along with similarities, it negates the intention to copy the original work; ii) similarities appearing in the work are incidental then there cannot be infringement; iii) there is co-incidence of certain elements it would not amount to infringement.

b. ***Use of superlative terms on its website without the approval of the Exchange***

i. Samco was awarded the title of "best equity broking house of the year" by CNBC Awaaz. The award was presented to Samco's CEO Mr. Jimeet Modi by Hon'ble Chief Minister of Chhattisgarh at the CNBC - Awaaz CEO Awards held at Raipur. Samco published the material on its website in the context of the above facts.

ii. The award was bestowed on Samco by CNBC Awaaz independently and no services were procured by Samco or its associates for the purpose of receiving the award.

iii. The material was published on its website as an announcement of the achievement of receiving the award and not for the purposes of influencing any investment/sale decisions of any investor/prospective investors. Therefore, as per Samco's interpretation, no prior approval of the Exchange was required.

iv. Samco did not make or publish any mass media advertisements i.e., television, newspaper, magazine advertisement with respect to the award and hence no prior approval was sought.

9.1.3. The Committee finds as under:

a. ***Discrediting other advertisements or Stock Brokers or making unfair comparisons***

Samco denied the observation/violation for the reasons as under:

i. Samco contended that the Exchange does not have jurisdiction to examine the 'imitation' of claims

The Committee observes that the matter pertains to an alleged violation of the Exchange's Code of Advertisement which provides that advertisements/material published by a Trading Member shall not contain any statement which directly or indirectly discredits other advertisements or Trading Members or makes unfair comparisons. Thus, adjudication of the same and other issues consequential and

incidental thereto falls within the regulatory purview of the Relevant Authority of the Exchange.

ii. Samco contended that there is no link between the material and the charges mentioned in the LO. The advertisement does not discredit or lead to an unfair comparison with RKSV or its advertisement

Upon scrutiny of the advertisements released by Samco and RKSV, it is observed that *prima facie* Samco's advertisements are conceptually similar to and built upon the advertisements released by RKSV. Further the visuals, stills and audio used by Samco are similar to the advertisements released by RKSV.
In its advertisements, RKSV used the tagline/catchphrase, *"Upstox start krke dekho."* Samco in its advertisements uses the dialogues *"Stock market pe start toh kiya pr trade kya karu?", "Halwa hai kya?!.... "*. The use of these dialogues when viewed considering the similarity of concept, setup, screenplay etc., directly, or indirectly discredits RKSV's advertisements or makes unfair comparisons.

Furthermore, the Committee notes the following comments received on the YouTube videos available at https://youtu.be/iafx5yH75VQ and https://www.youtube.com/watch?v=Br_WcwKaSZA;

"Great advertisement!! From my marketing knowledge I can see you have targetted Upstox,

Haha.. wonderful and a humerous take on that pathetic Upstox ad,

TARGETING UPSTOX TRADERS,

it looks like an upstox ad,

taking on upstox commercials,

Upstox ko dho daala .. Best Advertise,

Upstox ka copy,

looks like a parody of Upstocks ad and you guys nailed it,

Upstox be like :- Gajab bejjatee hai,

Takkar to upstock ads,

how can they copy the add i came here afterwatching upstox add...,

why does it seem like an upstox ad?"

Samco in reply to a comment i.e., *"Great advertisement!! From my marketing knowledge I can see you have targetted Upstox"* replied "*Thank you for the feedback!",* which indicates that Samco had the knowledge of the fact that the advertisement published by it, directly, or indirectly discrediting RKSV's advertisements and makes unfair comparisons.

Given the findings above, Samco's contention that, the advertisement does not discredit or lead to unfair comparison with RKSV or its advertisement, there are some fundamental differences between the products advertised by Samco and RKSV and there is no link between the material and the charges mentioned in the LO is not tenable.

iii. Samco contended that the advertisement was approved by the Exchange

The Committee observes that the Exchange approval was expressly restricted to the contents of the advertisement related to broking activity and does not extend to any other contents of the said advertisement. Further, the advertisement was subject to compliance, as applicable, with the Code of Conduct for stockbrokers given in Schedule II read with Regulation 7 of SEBI (Stockbroker and Sub Brokers) Regulation 1992, SEBI (Investment Adviser) Regulations, 2013, and such other rule/law/regulation which may be in force from time to time and subject to fulfillment of certain documents such as undertaking for adherence to the Code of Advertisement. In this regard Samco submitted an undertaking duly executed by its director confirming that the advertisement submitted by it for the Exchange approval meets all the parameters prescribed under the Code of Advertisement for Stockbrokers including "*17. The*

advertisement does not contain any statement which directly or indirectly discredits other advertisements or StockBroker or make unfair comparisons" among the other parameters etc.

b. ***Use of superlative terms on its website without the approval of the Exchange***

Samco denied the observation/violation for the reasons as under:

i. Samco contended that it was awarded the title of "best equity broking house of the year" by CNBC Awaaz. The material viz. "Samco is the No. 1 equity stockbroker in India" was displayed in the context of the CNBC award.

Upon scrutiny of the email correspondence received from CNBC Awaaz dated February 4, 2020, along with "Figure 1" and "Figure 2" annexed to Samco's reply to the LO, it is observed that the material viz. "Samco is the No. 1 equity stockbroker in India", was published by Samco in the context of the "best equity broking house of the year" award, received by it from CNBC Awaaz. Exchange Circular No. NSE/COMP/43373 dated January 30, 2020, stipulates that any display of awards received by a Trading Member from a third party will necessitate prior approval from the Exchange. Thus, the said publication without prior approval from the Exchange is in contravention of the regulatory provision stated above.

Samco's contention is not tenable.

ii. Samco conteded that the award was bestowed by CNBC Awaaz independently, and no services were procured by Samco or its associates for the purpose of receiving the said award. The material was published on its website as an announcement and not for the purposes of influencing any investment/sale decisions of any investor/prospective investors. Thus, as per its judgement no prior approval was required.

As per Exchange Circular No. NSE/COMP/33643 dated November 16, 2016, Trading Members shall obtain prior approval of the stock exchanges before issuance of the advertisement/material. Further, Exchange Circular No. NSE/COMP/43373 dated January 30, 2020,

provides that any content on Trading Member's website that promotes products/services/brokerage plans etc, shall require prior approval of the Exchange.

Thus, Samco's contention is not tenable.

iii. Samco contended that it did not make or publish any mass media advertisement.

As per Exchange Circular No. NSE/COMP/33643 dated November 16, 2016, 'Advertisement' shall include all forms of communications issued by or on behalf of Stock Broker in publicly available media that may influence investment/sale decisions of any investor/prospective investors. Further "forms of communications" shall include, form of document, pamphlets, circulars, brochures, notice or any research reports or any other literature or information, material published, or designed for use in a newspaper, magazine, SMS or other periodical, radio, television, telephone or tape recording, video tape display, signs or bill boards, motion pictures, telephone directories (other than routine listings) or other public media including websites or emails, whether in print or audio visual form or used in workshop/seminar or public speaking or in any other manner. In view of the above-mentioned regulatory provision, Samco's display of the award on its website amounts to "advertisement".

Thus, Samco's contention is not tenable.

9.1.4. Given the finding mentioned above, Samco violated the Code of Advertisement in 3 instances viz. discrediting other advertisements or Stockbrokers or making unfair comparisons in 2 instances and using superlative terms on its website without the approval of the Exchange in 1 instance.

9.1.5. In view of the findings as mentioned above, the Committee decided to levy a monetary penalty of Rs.1,50,000/- (Rs.50,000/- per instance) for the observed violation as per Exchange Circular No. NSE/INSP/47457 dated February 25, 2021 and directed Samco to withdraw the three advertisements in question from all public forum within 15 days from the date of this order.

DECISION

10. In view of the above, the Committee levied the following penalties as indicated against each of the violations:

Sr. No.	Committee's Findings	Prescribed Penalty as per Exchange Circular Nos. NSE/INSP/47457 dated February 25, 2021	Penalty Levied
1.	Non-adherence to the Exchange's Code of Advertisement	Rs.50,000/-	Rs.1,50,000/- (Rs.50,000/- per instance) and direction to withdraw the three advertisements in question from all public forum within 15 days from the date of this order.
TOTAL			**Rs.1,50,000/-**

11. Samco shall pay a monetary penalty of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only).

12. Samco shall withdraw the three advertisements in question from all public forum within 15 days from the date of this order.

Sd/-
Mona Bhide
(Chairperson)

Sd/-
K Narasimha Murthy
(Committee Members)

Sd/-
Ranganayakulu Jagarlamudi
(Committee Members)

Date: April 10, 2023