

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11(1), 11(4), 11(4A), 11B (1) and 11B (2) of the Securities and Exchange Board of India Act, 1992 read with Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Mr. Shashikant Kumar (Owner of SM Global Research)	CAXPK4388N

In the matter of Unregistered Investment Advisory by Mr. Shashikant Kumar (Owner of SM Global Research).

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an examination based on the complaint dated April 21, 2022, against Mr. Shashikant Kumar, owner of SM Global Research (hereinafter referred as the ‘**Noticee**’), wherein it was prima facie observed that the Noticee was carrying out unregistered investment advisory activities in violation of provisions of Section 12A (a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) , Section 12(1) of SEBI Act read with Regulation 3(1) of SEBI (Investment Advisers) regulations, 2003 (hereinafter referred to as “**IA Regulations**”) as well as provisions of Regulations 3(a), (b), (c), (d), 4 (1) and 4 (2) (o) of SEBI (prohibition of Fraudulent and Unfair Trade Practices relating to

Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”).

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

2. On the basis of findings of the examination, SEBI issued Show Cause Notice dated June 06, 2024 (“**SCN**”) to the Noticee which, *inter-alia*, alleged the following:
- (a) In reference to the aforesaid complaint, SEBI vide email dated November 18, 2022, sought documents and information, which was provided by the complainant. The details of which have been summarized below:
- i. The complainant was contacted telephonically by one Mr. Vijay Tiwari identifying himself to be an employee at SM Global Research seeking to provide investment advisory service, pursuant to which, the complainant agreed to avail of the services offered by the Noticee.
 - ii. It also stated that the complainant made a little profit from the first call and subsequently lost Rs.75,000/- in another call. Thereafter, the complainant was asked to transfer Rs.1,50,000/- in the Noticee’s account and was promised 5 times profit during when the complainant had incurred further loss.
 - iii. It was alleged that the Noticee had collected advisory fees to the extent of Rs. 1,51,400/- from the complainant in 5 installments during August 2021 in lieu of investment advice. However, the investment advises given by the Noticee led to a loss of Rs. 2.75 lakh to the complainant. Upon incurring losses the complainant sought refund of the fees paid to the Noticee, but despite several efforts, he did not receive the same from the Noticee. Therefore, the complainant had approached Indore Police / Local police station who advised to him file a complaint with SEBI.

iv. All investment advices were given by the Noticee via phone call / Whatsapp from the mobile no. +91 8109422355. The complainant had provided Whatsapp chats as proof of investment advice and other details. Some of the investment advices extracted from the screen shots of Whatsapp chat are as follows-

‘Buy BankNIFTY 37500 CE@400-405 TGT 450 475 500 SL – 350’

‘Buy BankNIFTY 5 AUG 2021 CE 36300.00’

‘Buy BankNIFTY 5 AUG 2021 CE 36100.00’

‘Intraday Buy BankNIFTY SEP 38300 CE BUY AT 340 TRGT 400 500+

v. Further, the said Whatsapp chats also revealed that there was a discussion between the Noticee and the complainant with respect to the loss arising due to the advice of the Noticee undertaken by the complainant over calls.

vi. In one of the screen shot, the details of the bank account and Gpay number for the payment shared with the complainant was observed to be as follows;

‘SM Research Shashikant Kumar, Account no. 50100290380901, IFSC – HDFC0000281’ G Pay ‘6263505425’

(b) During the examination, it was found that the Noticee had a website <https://smglobalresearch.com>, consisting of various tabs viz. home/ services/ support/ pricing/ blog/ contact. Further, the services section on the website had the following tabs - cash intraday/ future intraday/Equity Premium Services/Commodity Combo/ Future Premium Services and in the contact section, the address mentioned is: Madhya Pradesh Office - HIG 12 Bainganga Shopping Complex, MP, India 410661, email id info@smglobalresearch.com and phone no. +91 8109422355. However, it is observed that none of the tabs are active now and the website has also been taken down. However, a web-page was available on archived pages (web.archive.org).

(c) The Complainant has provided the screenshots of his payments of Rs.1,51,400/- made to the Noticee’s HDFC bank account No. 50100290380901.

From the said screenshots, it was also observed that Rs.10,000/- was transferred by complainant on 13/08/2021 into the Kotak Mahindra bank account of the Noticee, apart from the above money sent to the HDFC bank account of the Noticee. Accordingly, following is the break up for the total amount i.e. Rs.,161,400/- that was transferred -

Name of Account holder	Mode of payment	Paid into Shashikant Kumar	Date	Amount deposited (Rs)
Pallab kumar Bora	Via UPI handle PALLABKR.BORA97@OKSBI	HDFC bank account no. 50100290380901	28/07/2021	5900
			03/08/2021	5500
			20/08/2021	5000
			28/08/2021	90000
			29/08/2021	45000
	Via UPI handle	Kotak Mahindra Bank Account No. 4945652515	13/08/2021	10000

- (d) Based on the details available in the complaint, additional information was sought from the banks. It was observed from the Bank account statement, Account Opening Form (AOF) and KYC that the bank account mentioned on the complaint belonged to the Noticee. Further, the Noticee has opened bank accounts in his name with ICICI Bank, HDFC Bank, Kotak Mahindra Bank and Central Bank of India. However, the investment advisory fees Rs. 1,61,400/- received from complainant was credited into two bank accounts of the Noticee i.e. HDFC and Kotak Mahindra Bank.
- (e) The Noticee has been referred to as the Founder & CEO on the website <https://smglobalresearch.com>, further as per the customer information received from telecom service providers, it was observed that both the numbers mentioned on the Noticee's website i.e., '6263505425', for making payment and '8109422355', for communication with the complainant via phone call and WhatsApp, belong to Noticee (both the numbers are now inactive).
- (f) SEBI had issued letter dated November 30, 2023 to the other address of the Noticee as available on record i.e. Indore, but the same returned undelivered

citing insufficient address. Further, e-mails dated November 30, 2023 were also sent to all the email addresses available on records, however no reply has been received till date.

- (g) From the website contents it is gathered that the Noticee was holding himself out as an investment advisor to sell his investment advisory services to prospective clients, however when verified, it was observed that neither the Noticee nor SM Global Research are registered with SEBI in any capacity. Further, a search on the MCA website for the company, SM Global Research also did not yield any result.
- (h) In view of the aforesaid facts, it was alleged that the Noticee was conducting investment advisory activities and collected fees during the period July – August 2021 amounting to Rs.163,760/- without obtaining requisite registration from SEBI, as required under Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of IA Regulations, 2013.
3. Based on the facts stated in the said SCN, it was alleged that the Noticee was engaged in the activities of an investment adviser without obtaining the requisite registration from SEBI, as required in terms of Section 12(1) of the SEBI Act read with Regulation 3(1) of IA Regulations.
4. Further, it is also observed and alleged that the contents on the website taken together with Whatsapp chats of the complainant with the Noticee regarding investment advisory services and the collection of fees indicate that the activities of Noticee are fraudulent in nature and are covered within the definition of “fraud” as defined in Regulation 2(1)(c) of PFUTP Regulations, 2003, which reads as under:
- “Definitions**
2. (1) *In these regulations, unless the context otherwise*
-
- c) *“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his*

connivance or by his agent while dealing in Securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss,....”

5. On combined reading of provisions mentioned above it can be inferred that the activities/ dealings of the Noticee are in the fraudulent in nature and accordingly, he has violated Regulations 3(a), (b), (c), (d), 4 (1) and 4 (2) (o) of PFUTP Regulations, 2003, Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulation 3 (1) of the IA Regulations, 2013.
6. Therefore, the Noticee was called upon to show cause as to (i) why suitable directions under Sections 11(1), 11(4) and 11B (1) of the SEBI Act, 1992 including direction of refund of fees/monies collected from the investors should not be issued against him and (ii) why inquiry should not be held against him in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon him under Section 11 (4A), 11B (2) read with Section 15EB and 15HA of the SEBI Act, for the aforesaid violations.
7. SCN dated June 06, 2024 was sent to the Noticee through SPAD at the addresses of the Noticee, available on record, however the same returned undelivered. Subsequently, the SCN was served to the Noticee vide a newspaper publication dated June 25, 2024 in an English (Times of India, Indore, English Edition and Times of India, Patna, English Edition) and Hindi (Patrika, Indore, Hindi Edition and Dainik Baskar, Indore, Hindi Edition). In the interest of natural justice, through aforesaid publication, the Noticee was also granted an opportunity of personal hearing on July 03, 2024. However, the Noticee neither appeared for the personal hearing and nor submitted any reply to the SCN.
8. I note that sufficient opportunities of filing reply to the SCN and hearing have been given to the Noticee, which the Noticee failed avail. Hence, it is presumed that Noticee has nothing to submit in respect of the allegations levelled in the SCN. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal

(SAT) in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, held that,

".....the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".

9. Accordingly, the matter is proceeded ex-parte on the basis of the documents and information available on record.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have considered the material available on record including complaint, the SCN, Bank statements, KYC documents, Account opening forms etc.

11. I note that following issues arise for consideration in the present case: -

A. Whether the Noticee acted as an unregistered investment advisor in contravention of Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations and whether the conduct of the Noticee can be construed as 'fraud' in terms of the Regulation 2(1)(c) of PFUTP Regulations and consequently he is in violation of Regulations 3(b), (c), (d), 4(1) and 4(2)(o) of SEBI PFUTP Regulations read with Section 12 A (a), (b) and (c) of the SEBI Act?

B. If answer to issue no. A is in the affirmative, what penalty and/or directions should be passed against the Noticee?

12. Before proceeding further, it is pertinent to refer to the relevant provisions of the SEBI Act, PFUTP Regulations and the IA Regulations which are reproduced hereunder: -

SEBI Act

Section 12 (1) - Registration of stock brokers, sub-brokers, share transfer agents, etc.

" No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:"

Section 12A - Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

"No person shall directly or indirectly-

- a. use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- b. employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;*
- c. engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"*

IA Regulations

Regulation 2(1)(g) – Definition of Consideration

“consideration” means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;

Regulation 2(1)(l) – Definition of Investment Advice

“investment advice” means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through Provided that investment advice given through any other means of communication for the benefit of the client and shall include financial planning: Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;”

Regulation 2(1)(m) – Definition of Investment Adviser

“investment adviser” means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;”

Regulation 3(1) – Requirement of Registration from SEBI to act as Investment Adviser

“On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:”

Prohibition of Fraudulent and Unfair Trade Practices Regulations, 2023 (PFUTP Regulations)

Section 3 - Prohibition of certain dealings in securities

“No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under”.*

Section 4- Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.*
- (2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: -*

...

.....

- (o) [fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;]*

Issue A: Whether the Noticee acted as an unregistered investment advisor in contravention of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations and whether the conduct of the Noticee can be construed as ‘fraud’ in violation of Regulations 3(b), (c), (d), 4(1) and 4(2)(o) of SEBI PFUTP Regulations read with Section 12 A (a), (b) and (c) of the SEBI Act?

13. The SCN alleged that the Noticee was conducting investment advisory activities without obtaining requisite registration from SEBI, as required under Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of IA Regulations, 2013.
14. In this regard, I note that Regulation 2(1) (m) of the IA Regulations defines the term '*investment adviser*'. As per Regulation 2(1) (m) of the IA Regulations, investment adviser means any person, who is engaged in the business of providing investment advice to clients or other person or group of persons for consideration. Further, it includes any person who holds himself out as an '*investment adviser*'. Regulation 2(1)(m) of the IA Regulations refer to terms '*consideration*' and '*Investment advice*'. As per Regulation 2(1)(g) of the IA Regulations, consideration means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice. As per Regulation 2(1)(l) of the IA Regulations, '*investment advice*' means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning. However, advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public, shall not be an investment advice within the meaning of Regulation 2(1)(l) of the IA Regulations.
15. From the facts mentioned in the SCN it is observed that the Noticee had his website, <https://smglobalresearch.com>, that consisted of various tabs which indicated that the Noticee was providing investment advisory services, through his website and it was also noted that the said services were provided largely via telephone and whatsapp chats as in the case of the complainant. Further, the Noticee had asked the complainant to pay fees in lieu of investment advice as observed from the Whatsapp Chats and complaint, additionally, in this regard, the Noticee has collected fees during the period July – August 2021 amounting to Rs.163,760/-. It is also observed from the complaint that the Noticee had promised

assured returns to the complainant by promising 5 times the profit of the amount given as advisory fees. Thereafter, in this regard, it was observed that neither the Noticee nor SM Global Resources are registered with SEBI as an intermediary. Thus not being registered with SEBI but still advertising on his website about providing investment advice means that the Noticee was intentionally providing misleading information. Also not mentioning any details regarding not possessing the SEBI registration means that the Noticee knowingly and deliberately withheld the information from the complainant and other clients.

16. This clearly indicates that the Noticee was engaged in investment advisory service relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through his website, <https://smglobalresearch.com>, in lieu of consideration. I note that, if an entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client in lieu of consideration, including entities which is holding himself out as investment adviser, will be covered by the definition of 'Investment Adviser' as given in Regulation 2(1)(m) of the IA Regulations, 2013. I find that in terms of Regulation 2(1)(l) of IA Regulations, 2013, the Noticee was providing Investment advisory services through his website. As noted above, the Noticee received Rs.1,51,400/- and Rs.10,000/- as considerations from the complainant in HDFC Bank account and Kotak Mahindra Bank account respectively for the investment advisory services provided by him. Hence, I find that these services were being offered by the Noticee to be in lieu of the consideration, as noted above. Therefore, I find that the Noticee was engaged in the business of providing investment advice to his clients, for consideration, and thus, acting as an investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013. From the discussion above, I further find that the Noticee was holding himself out to be Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013.

17. Further, I note that the Noticee has not made any submissions to prove that these funds were earned from other source of income. Hence, I find that these services were being offered by the Noticee for the consideration, as noted above. Therefore, I find that the Noticee was engaged in the business of providing investment advice to his clients, for consideration, and thus acted as an investment adviser, as defined under regulation 2(1)(m) of the IA Regulations.

18. I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, 2013, the registration of the investment advisers is mandatory. It provides that, *“On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations”*.

19. It is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct their activities in accordance with the provisions of the SEBI Act and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

“No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.”

20. Therefore, I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy, inter alia, the following requirements, as provided under the IA Regulations:

- i. An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as

- specified in the First Schedule to IA Regulations, 2013 along with requisite nonrefundable application fee;
- ii. The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:
 - a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognized foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;
 - b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
 - c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.
 - iii. Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

21. Further, the IA Regulations provides for the minimum professional qualification and prescribes mandatory net-worth requirement. Further, it inter-alia provides for disclosures of any conflict of interest, risk profiling of clients, maintenance of records related to client assessments and the suitability of advice. The

prescriptions in the IA Regulations are intended to safeguard the interest of investors and curb the perpetration of unregistered entities entering the field of investment advisory services and indulging in unscrupulous market practices.

22. It is noted that the Noticee was not registered with SEBI in the capacity of Investment Adviser during the period under examination. It is further noted that the Noticee received amounts to the tune of Rs.1,53,760/- (Rs. 1,51,400/- given by the complainant + Rs. 2360/- credited to the HDFC bank account on 31.08.2021) and Rs.10,000/- in the bank accounts of HDFC Bank and Kotak Mahindra Bank respectively totaling to Rs.1,63,670/- which are in the nature of Investment Advisory fees.

23. In view of the above, I find that aforesaid total credit of Rs.1,63,760/- in the bank accounts of HDFC Bank and Kotak Mahindra Bank of the Noticee was received by the Noticee as fee for investment advisory services provided by him while acting as an investment adviser without obtaining certificate of registration from SEBI. In view of the above, I find that the Noticee, by acting as investment adviser within the meaning of the IA Regulations and without obtaining certificate of registration from SEBI, has acted in total disregard to the requirements of law and has violated Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act.

24. The SCN also alleged that the contents on the Noticee's website taken together with Whatsapp chats of the complainant with the Noticee regarding investment advisory and the collection of fees indicate that the activities of Noticee are fraudulent in nature and are covered within the definition of 'fraud' in terms of the Regulation 2(1)(c) of PFUTP Regulations, which is in violation of Regulations 3(b), (c), (d), 4(1) and 4(2) (o) of SEBI PFUTP Regulations read with Section 12 A (a), (b) and (c) of the SEBI Act.

25. However, the Noticee failed to respond to the SCN in this regard.

26. However, from the above, I find that, the discussed acts and omission of Noticee is, fraudulent and is covered under the definition of 'fraud' defined under Regulation 2(1)(c) of PFUTP Regulations. Thus, fraudulent activity/ conduct/ act /omission /practice of Noticee, as discussed above, is in violation of provisions of Sections 12A (c) of SEBI Act and Regulations 3 (d) and Regulations 4(1) of PFUTP Regulations. I also find that the Noticee has made descriptions regarding returns in a very reckless and careless manner. Further, the Noticee, by assuring guaranteed returns by investing in shares, has violated the fundamental canon of the securities market i.e. investments are subject to market risks and therefore, have knowingly misled the investors at large by engaging in acts, practices, course of businesses, which operated as 'fraud' as defined under Regulation 2(1)(c) of the PFUTP Regulations.

27. I further note that Regulation 4(2)(o) of the PFUTP Regulations prohibits fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income. Therefore, I note that the Noticee was indeed involved in mis-selling of services to his clients by making false and misleading statements of providing guaranteed returns to the investors. The act of advertising on the website, contacting the complainant over phone telephonically, collecting fees in return for investment advisory services and promising assured returns to clients by the Noticee as established above and knowingly concealing the fact that he was not registered with SEBI as an investment adviser means that he has misrepresented about his expertise in investment advisory thereby luring and inducing investors, which is clearly in contravention of Regulation 4(2)(o) of the PFUTP Regulations.

28. Thus, I note that the Noticee, by assuring guaranteed returns with respect to their investment advisory related plans and by knowingly publishing false and misleading information, defrauded the potential investors by inducing them to invest in the shares based on the advice of promising guaranteed returns and

therefore, I find that the Noticee has violated the provisions of Regulation 3 (b), (c) & (d), 4(1) and 4 (2)(o) of the PFUTP Regulations read with Section 12A(a), (b), (c) of the SEBI Act.

29. In view of above, I am convinced and would like to conclude that these activities were being carried out by the Noticee without obtaining the necessary certificate of registration as an investment adviser and therefore, the Noticee has violated the provisions of Section 12(1) of the SEBI Act read with Regulation 3 of the IA Regulations. Further, as concluded above, the Noticee, by making fraudulent and misleading dissemination on their email with respect to assurance of guaranteed returns have also violated the provisions of Regulation 3(b), (c) & (d) and 4(1) and 4 (2)(o) of the PFUTP Regulations read with Section 12A(a), (b), (c) of the SEBI Act.

Issue B: If answer to issue no. A is in the affirmative, what penalty and/or directions should be passed against the Noticee?

30. I note that the SCN has called upon the Noticee to show cause as to why appropriate penalty be not imposed upon him under Section 15EB and 15HA of SEBI Act for the violations alleged in the SCN. Sections 15 EB and 15HA of the SEBI Act are extracted hereunder: -

Penalty for default in case of investment adviser and research analyst

“15 EB - Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.”

Penalty for fraudulent and unfair trade practices

“15 HA - If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher”.

31. I note that Section 15J of the SEBI Act provide for factors which are required to be considered for adjudging quantum of penalty. Section 15J of the SEBI Act reads as follows: -

“Factors to be taken into account while adjudging quantum of penalty.

15J. *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.”*

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

32. The activities of the Noticee, as brought out above, seen in the backdrop of the aforesaid provisions show that he was acting as an investment adviser without holding the certificate of registration as investment adviser. Therefore, I find that the Noticee has violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations and Regulation 3 (b), (c) & (d) and 4(1), 4 (2)(k) and 4 (2)(s) of the PFUTP Regulations read with Section 12A(a), (b), (c) of the SEBI Act

33. As observed above, I note that the Noticee received total credit of amounts to the tune of Rs.1,63,760/-, in his HDFC Bank and Kotak Mahindra Bank accounts as advisory fees. These being the proceeds of an illegal activity, are liable to be refunded to the respective clients.

DIRECTIONS

34. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4), 11(4A), 11B (1), 11B (2) and 19 of the SEBI Act, and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, do hereby issue the following directions:

- (a) The Noticee shall refund all the money collected/received from any investors / complainants, as fees or consideration or in any other form, in respect of his unregistered investment advisory activities immediately, and in any case, within a period of three months from the date of this order.
- (b) The Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, about this Order and shall give details of modalities for refund, including the details of contact person such as name(s), address(es) and contact detail(s) of person(s) to be approached for refund, within 15 days from the date of receipt of this order;
- (c) The repayments to the complainants/investors shall be effected only through electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- (d) The Noticee is prohibited from selling his assets, properties including mutual funds/shares/securities held by him in demat and physical form except for the purpose of effecting refunds as directed above. Further, the banks are directed to allow debit from the bank accounts of the Noticee, only for the purpose of making refunds to the clients who were availing the investment advisory services from the Noticee;
- (e) After completing the aforesaid repayments, the Noticee shall file a report of such completion with SEBI addressed to the "Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla

Complex, Bandra (East) Mumbai –400051”, within a period of 15 days, after expiry of four months from the date of public notice, as directed above, duly certified by an independent Chartered Accountant and the direction at para 34(a) above shall cease to operate upon filing of such report;

- (f) The remaining balance amount shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/complainants/investors who were availing the investment advisory services from the Noticee. Thereafter, remaining amount, if any, will be deposited in the ‘Investors Protection and Education Fund’ maintained by SEBI;
- (g) The Noticee is debarred from accessing the securities market, directly or indirectly and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two years from the date of this order or till the date of filing of report, as directed in para 34 (e) above, whichever is later;
- (h) The Noticee shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 34(g) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws;
- (i) The Noticee is hereby imposed with penalty of Rs.5,00,000/- (Rupees Five Lakh Only) under Section 15HA of the SEBI Act and Rs.1,00,000/- (Rupees One Lakh Only) under Section 15EB of the SEBI Act;
- (j) The Noticee shall remit / pay the said amount of penalty, within a period of forty-five (45) days from the date 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 EDs/CGMs → PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

(k) In case of failure of the Noticee to comply with the aforesaid directions in subparagraph (a) and (i), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover such amounts, from the Noticee, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.

35. For any non-compliance of this order, the Noticee shall be subject to strict action under the applicable provisions of the law, including prosecution.

36. It is clarified that the direction for refund as given in Para 34(a) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

37. This order shall come into force with immediate effect.

38. A copy of this order shall be sent to the Noticee, all the recognized Stock Exchanges, the relevant banks, Depositories, Registrar and Transfer Agents of Mutual Funds and BSE Administration and Supervision Ltd., to ensure that the directions given above are strictly complied with.

Date: July 19, 2024

Place: Mumbai

**G RAMAR
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**