

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:

Name of the Noticee	PAN
<i>M/s G N Traders (Proprietor – Mr. Kashif Siddique)</i>	<i>HKBPS2854C</i>

In the matter of unregistered investment advisery by M/s G N Traders, Proprietor – Mr. Kashif Siddique

BACKGROUND

1. Securities and Exchange Board of India (“hereinafter referred to as **SEBI**”) had conducted an examination on receipt of a complaint dated 20th December, 2021 against Mr. Nikhil Kumar and *M/s G N Traders, Proprietor – Mr. Kashif Siddique* (hereinafter referred to as “**Noticee**”) and prima facie found that it was carrying out unregistered investment advisery activities promising unrealistic/guaranteed returns through trading in shares in the market in violation of provision of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”).

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

2. Based on the findings of the investigation, SEBI issued Show Cause Notice dated April 30, 2024 (“**SCN**”) to the Noticee and was sent through SPAD at the addresses of the Noticee as available in the KYC obtained from the Bank account. The same was returned undelivered with the remark ‘*No such person in the address*’. As the address of the Noticee is not available to serve the SCN through affixture, the SCN was served by way of Newspaper Publication. Accordingly, the Notice was published on June 15, 2024 in the Ranchi edition of Hindustan Times (English) and Dainik Jagran (Hindi) as the addresses available on record were of Ranchi. The said publications mentioned that the SCN could not be served on the last known address of the Noticee and may be downloaded from SEBI website. However, no reply was received from the Noticee in this regard.
3. The Noticee vide the aforesaid Newspaper publications, in the interest of natural justice, was also granted an opportunity of personal hearing on June 25, 2024. However, the Noticee did not appear for personal hearing on the said date.
4. In view of the above, I note that sufficient opportunities of filing reply to the SCN and hearing have been given to the Noticee, however, the Noticee has failed to reply or to appear in the hearing. Accordingly, the matter is proceeded ex-parte based on the documents and information available on record.
5. Further, it is pertinent to note that the Hon’ble SAT in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed 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*”.
6. Further, the Hon’ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: “.....*appellants have neither filed reply to show cause notices*

issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”

7. Additionally, the same position has been reiterated by the Hon’ble SAT in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon’ble SAT observed as under: “...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”
8. In view of the observations made by the Hon’ble SAT, I find no reason to take a different view in the instant matter and shall decide the issue as per the principle laid down by the Hon’ble SAT in above orders. As the Noticee did not file any reply to the SCN and did not appear for the personal hearing in the instant matter, it can be presumed that the Noticee has admitted the charges alleged against it in the SCN.

FACTS OF THE CASE:

9. Pursuant to the receipt of the aforesaid complaint, an examination into the activities of the Noticee was undertaken by SEBI and it was observed and alleged the followings:
 - a. SEBI was in receipt of complaint alleging that the Noticee is a fraud company and collected fees of INR 20,000 from the complainant in the pretext of

providing account handling services and weekly returns through trading and promised unrealistic/guaranteed returns of INR 5,00,000 through trading in share market. The complainant has provided the details of payment of INR 20,000 along with details of HDFC Bank Account of the Noticee in which the money was transferred. The complainant has also provided the screen shot of Whatsapp messages having details as provided by Noticee and communication/chat with a representative of the Noticee named Nikhil Kumar.

- b. The representative of Noticee disclosed the pricing details and bank account details for making payment through Whatsapp and the same is as under-
Plan Details:

“Bank Name:- HDFC Bank Ac Name:- G N Traders Ac No:- 50200060535954 Ac Type:- Current; IFSC Code:- HDFC0004213; 15151 charge for sms service by whatsapp or text msg with proper tg/sl & booking/exit updation 49999 charge for account handle service Valid till 5 lakh profit Capital 50k Duration 25 Working days”

- c. The extracts of the WhatsApp chats as submitted by the complainant are as under:

“

GN Traders: “Bank Name:- HDFC Bank Ac Name:- G N Traders Ac No:- 50200060535954 Ac Type:- Current; IFSC Code:- HDFC0004213 15151 charge for sms service by whatsapp or text msg with proper tg/sl & booking/exit updation” 49999 charge for account handle service Valid till 5 lakh profit Capital 50k Duration 25 Working days”

Whatsapp Chat on Nov 16, 2021

Complainant: “I arranged 40k ka”

GN Traders: “20k demat me chhodo 20k pay karo”

Complainant: “15k pay chalega 25k cap”

GN Traders: “Nai sir plz request, Me capital manage kar lunga Dont worry But plz mujhe bhi aage se suns padega 2500 ka bhi profit karunga me dont worry But 3 din me capital badha lunga 20k mese”

Whatsapp Chat on Nov 17, 2021

GN Traders: "Good morning sir Have a nice day Today also target done Continuously 3 days demo done almost profit"

Complainant: "today profit"

GN Traders: (Attachment) "Good morning Banknifty 38000 CE Buy @ 300-320 400-420 tgt Done 470++"

Whatsapp Chat unknown date

GN Traders: "ofc nai jap aye"

Complainant: "ok"

GN Traders: "Monday se proper trade work karta hua, aap khali plz login mst kwrna sir bsr bar"

Complainant: "ok"

GN Traders: "Baki me delkh luga sab"

Complainant: "kal mkt main 10k tak kamne ka mauka tha"

Whatsapp Chat on Nov 29, 2021

Complainant: "hello aaj ka kio trade hai"

GN Traders: "Good m4orning Have a nice day Trade done hone k bad inform karta hu wait"

Complainant: "tabiyat thi"

GN Traders: "Buy banknifty 35900 pe @370-350 tg 40/550 sl 250"

Whatsapp Chat unknown date

GN Traders: "Buy banknifty 36400 pe@290-270 tg 390/490 sl 190"

Complainant: "G PAY KARVA DO"

Whatsapp Chat Dec 08, 2021

Complainant: "kya hua abhi tak koi update nahi"

GN Traders: "Wait karo bhai ayega Buy banknifty 37000 ce@330-300 tg 400/500 sl 230"

Whatsapp Chat Dec 10, 2021

Complainant: "hello aaj 3 day poora ho gaya hai ..update karo tatkal.."

GN Traders: "Dont worry sir Weekend chal raha he Monday working day me process hoga"

Complainant: "Monday ko pakka ho Jana chahiye dear... otherwise I will go next step.." Monday to Monday 1 week.."

Whatsapp Chat Dec 13, 2021

Complainant: "hello nikhil aaj ho jaye.."

Whatsapp Chat Dec 14, 2021

Complainant: "kya hua no any update lagra hai Dene ke mood min nahi ho main aage DG POLICE AND ssp Vadodara ko letter bhej raha hoon"

Whatsapp Chat Unknown date

Complainant: "trade ho gaya kya login and exit the position heavy loss ho raha hain"

- d. The details of the bank account mentioned in the complaint is tabulated below:

Bank	Account Name	Account No.	IFSC Code
HDFC Bank	G N Traders	50200060535954	HDFC0004213

- e. From the analysis of bank account statements of HDFC Bank account, it is observed that the complainant made a payment of Rs.20,000/- to the Noticee towards fee for advisory services provided by the Noticee. The Bank account statements, Account Opening Form and KYC details were sought from various banks and the same were received from HDFC Bank, ICICI Bank, Axis Bank and IDFC First Bank. From the analysis of the same it was observed that GN Traders is a proprietorship firm and Mr. Kashif Siddique is the proprietor.

- f. The pricing details and bank account details for making payment were mentioned for the packages offered by the Noticee in the WhatsApp chats, as mentioned above.
- g. The representative of Noticee shared the details of fees for account handling services along with profit details, capital required and validity of the plan which makes it clear that Noticee was charging fees to the clients for its services. The Noticee, through WhatsApp chats shared the details of various plans.
- h. Noticee was using bank accounts of HDFC Bank, ICICI Bank, Axis Bank and IDFC First Bank for collecting the fees for providing the investment advisory services. From the analysis of KYC, AOF and bank account statements provided by Axis Bank, ICICI Bank, IDFC First Bank and HDFC Bank, it is noted that various credit entries were made in the accounts with description as 'trading', 'registration fees', 'subscription fee', 'investment', 'fees', 'demat handling', 'market', 'stocks', 'trading services', etc., which appears to be in the nature of fees collected for investment advisory activities. The following details of the bank accounts are noted:

S.NO	Bank Name & A/C No	Account Name	Name of proprietor	Date of account opening	Date of last transaction	Amount considered as Advisory fee (in Rs.)
1.	HDFC Bank 50200060535954	G N Traders	Kashif Siddique	18/08/2021	22/04/2022	47,40,961
2.	ICICI Bank 252005000525			21/09/2021	20/10/2021	47,87,668
3.	Axis Bank 921020012478578			23/04/2021	02/08/2021	24,70,545
4.	IDFC FIRST Bank 10071952781			21/06/2021	25/10/2021	20,02,001
TOTAL						1,40,01,175

- i. From the above, it was alleged that the Noticee fraudulently represented that it provided account handling services, and managed capital by trading in

markets. The Noticee even assured guaranteed returns and fraudulently collected monies from investors as the assurances lured the investors.

j. Further, Noticee knowingly concealed the fact from the investors that it was not registered with SEBI as an investment adviser and also misrepresented in front of the investors about their expertise in investment advisory and thereby lured and induced investors to deal in the markets by availing their services with the objective of enhancing his income.

k. The conduct of the Noticee through the aforementioned activities was alleged to be 'fraud' in terms of the Regulation 2(1)(c) of PFUTP Regulations, 2003.

10. Based on the facts stated in the said SCN, it was alleged that the Noticee was engaged in the activities of an investment advisory service 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 the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("**IA Regulations**"). Further, it was also alleged that the conduct of the Noticee through the aforementioned activities construed as '*fraud*' in terms of the Regulation 2(1)(c) of PFUTP Regulations, 2003 which is in violation of Regulations 3(b), (c), (d), 4(1), 4(2) (k), 4(2)(s) of SEBI PFUTP Regulations, 2003 read with Section 12 A (a), (b) and (c) of the SEBI Act, 1992.

11. The Noticee was called upon to show cause as to (i) why suitable directions, including 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 the Noticee and (ii) why inquiry should not be held against the Noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon them under Section 11 (4A), 11B (2) read with Section 15EB and 15HA of the SEBI Act, 1992, for the aforesaid violations.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have considered the material available on record and I note that the allegation against the Noticee is that the Noticee acted as an investment adviser without obtaining requisite certificate of registration from SEBI, thereby the Noticee has allegedly violated Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations. I note that following issues arise for consideration in the present case:-

- A. *Whether the Noticee acted as an unregistered investment adviser in contravention of Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations?*
- B. *Whether the conduct of the Noticee can be construed as 'fraud' in terms of the Regulation 2(1)(c) of PFUTP Regulations, 2003 and consequently whether the conduct of Noticee is in violation of Regulations 3(b), (c), (d), 4(1), 4(2) (k), 4(2)(s) of SEBI PFUTP Regulations, 2003 read with Section 12 A (a), (b) and (c) of the SEBI Act, 1992?*
- C. *If answer to issue no. A and B are in the affirmative, what penalty and/or directions should be passed against the Noticee?*

13. Before proceeding further, it is pertinent to refer to the relevant provisions of the SEBI Act 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:”

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (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: -

- (k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;*
- (s) mis-selling of securities or services relating to securities market;”*

A. Whether the Noticee acted as an unregistered investment adviser in contravention of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations?

14. In this regard, I note that, Regulation 2(1)(m) of the IA Regulations defines the term 'investment adviser'. As per the said provision, *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. In this regard, I note the following facts from the materials available on record:

- a. The Noticee through its representative named Mr. Nikhil Kumar shared details of various plans through WhatsApp chats to the complainant including the details of fees for account handling services along with profit details, capital required and validity of the plan.
- b. Further, I note that the complainant paid amount to the tune of Rs. 20,000/- to the Noticee's bank account for availing the services offered by it in relation to buy and sell of shares.

- c. It was also noted that the narration of several credit entries in the aforementioned bank accounts of Noticee read as 'trading', 'registration fees', 'subscription fee', 'investment', 'fees', 'demat handling', 'market', 'stocks', 'trading services' which appears to be in the nature of fees collected for investment advisory activities etc.

16. I find that the aforesaid facts clearly establish that the Noticee was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products in lieu of consideration (as seen from the bank accounts of the Noticee) which is in line with regulation 2(1)(l) of the IA Regulations, ie providing "*investment advice*". The reason being 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 are holding themselves out as investment advisers, are covered by the definition of "*Investment Adviser*" as given in Regulation 2(1)(m) of the IA Regulations.

17. Further, as noted above, I note that the Noticee used to charge fees for investment advisory services in connection with investment advisory activities through its bank account mentioned on the WhatsApp chat sent to the complainant. Hence, I find that the Noticee for the consideration, as noted above, was offering these services. Therefore, I find that the Noticee was engaged in the business of providing investment advice to its clients, for consideration, and thus, acting as an investment adviser, as defined under regulation 2(1)(m) of the IA Regulations.

18. As per IA Regulation 3(1), 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 SEBI Act and Regulations framed thereunder. The provision reads as follows:

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

- 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 Advisery) 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.

20. I also note that safeguards provided under IA Regulations require continued minimum professional qualification and net worth requirement for investment adviser, including disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client based on client's objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc. These requirements are mandatory as these are aimed at protection of investor interest.

21. Further, I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, 2013, any person carrying out investment advisory activities shall 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.”

22. In the present matter, I note from the available records that the Noticee was not registered with SEBI in the capacity of Investment Adviser during the period under examination. Hence, I find that the activities of the Noticee, as brought out above, were being carried out by the Noticee without holding the certificate of registration

as an investment adviser and hence are in violation of Section 12(1) of the SEBI Act read with Regulation 3(1) of the IA Regulations.

23. In this connection, I note from the SCN that the Noticee received amounts to the tune of Rs. 47,40,961/-, Rs.47,87,668/-, Rs.24,70,545 and Rs.20,02,001/- in the said bank accounts of HDFC Bank, ICICI Bank, Axis Bank and IDFC First Bank respectively totaling to Rs.1,40,01,175 /- which are in the nature of Investment Advisery fees. From the available records, the first credit related to advisery fee is in Axis Bank account and it is on May 13, 2021. Therefore, May 13, 2021 may be considered as the date of commencement of IA activity by the Noticee.

24. In view of the above, as observed earlier, I find that total credit of Rs.1,40,01,175/- was received by the Noticee from the aforesaid bank accounts as fee for investment advisery services while acting as an investment adviser without obtaining certificate of registration from SEBI. Thus the Noticee by acting as investment adviser within the definition as per the IA Regulations and without obtaining certificate of registration from SEBI has violated Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act.

B. Whether the conduct of the Noticee can be construed as 'fraud' in terms of the Regulation 2(1)(c) of PFUTP Regulations, 2003 and consequently whether the conduct of Noticee is in violation of Regulations 3(b), (c), (d), 4(1), 4(2) (k), 4(2)(s) of SEBI PFUTP Regulations, 2003 read with Section 12 A (a), (b) and (c) of the SEBI Act, 1992?

25. SCN also alleged that the conduct of the Noticee of knowingly concealing the fact that it was not registered with SEBI as an investment adviser and of misrepresenting about its expertise in investment advisery thereby luring and inducing investors can be construed as 'fraud' in terms of the Regulation 2(1)(c) of PFUTP Regulations, 2003, which is in violation of Regulations 3(b), (c), (d), 4(1), 4(2) (k), 4(2)(s) of SEBI PFUTP Regulations, 2003 read with Section 12 A (a), (b) and (c) of the SEBI Act, 1992.

26. I also find that the Noticee has made descriptions regarding returns in a very reckless and careless manner. Further, 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, has 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. Regulation 4(2)(k) of PFUTP Regulations provides that dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities. Also, Regulation 4(2)(s) of the PFUTP Regulations prohibits mis-selling of securities or services related to securities market. Mis-selling has further been explained in the said Regulations to mean knowingly making false or misleading statements or knowingly concealing associated risk or not taking reasonable care to ensure suitability of the securities or service to the buyer. Therefore, I note from the facts of the case and the material available on records that the Noticee was indeed involved in mis-selling of services to their clients.

28. Thus, I note that the Noticee by knowingly communicating false and misleading information related to investment in securities market without ensuring prior suitability and further making reckless statement of profits have thereby defrauded the complainant by inducing him to invest in the shares based on the advice and therefore, I find that the Noticee has violated the provisions of 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.

29. In view of above, I am convinced that the Noticee was carrying out the activities related to investment adviser without obtaining the necessary certificate of registration from SEBI and therefore, the Noticee has violated the provision 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 the WhatsApp chats has also violated the provisions of 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.

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

30. Since the answer to both the previous issues were in affirmative, I shall now examine the liability of the Noticee that arises due to the aforementioned violations.

31. In this regard, I note that the SCN had called upon the Noticee to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B(1) including direction to refund the monies/fees collected from the clients towards the alleged investment advisory services and debarring the Noticee from trading and/or dealing in the securities market be not issued and why appropriate monetary penalty be not imposed upon it under Section 15EB and 15HA of SEBI Act for the violations alleged in the SCN. Section 15EB and 15HA of the SEBI Act are reproduced verbatim as under: -

Section 15 EB - Penalty for default in case of investment adviser and research analyst

“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.”

Section 15HA - Penalty for fraudulent and unfair trade practices

“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”.

32. I note that Section 15EB of the SEBI Act was inserted in the SEBI Act by the Finance Act, 2018 with effect from March 08, 2019. As noted above, the Noticee continuously received investment advisory fees in its bank accounts since date of opening of such bank accounts. From the findings above, I find that the Noticee acted in violation of Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act from May 2021. Further, as noted in the order above, Noticee also indulged in fraudulent activities of assuring guaranteed returns, therefore, I find that the Noticee is liable to be imposed with penalty under both Sections i.e. 15EB and 15HA of the SEBI Act.

33. 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.”

34. As observed above, I note that the Noticee received total credit of amounts to the tune of Rs.47,40,961/-, Rs.47,87,668/-, Rs.24,70,545 and Rs.20,02,001/- in the said bank accounts of HDFC Bank, ICICI Bank, Axis Bank and IDFC First Bank respectively totaling to Rs.1,40,01,175 /- (Rupees One Crore Fourty Lakhs One Thousand One Hundred and Seventy-Five) as investment advisory fees, being the proceeds of an illegal activity and are liable to be refunded to the respective clients.

DIRECTIONS

35. 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 its 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 investors shall be effected only through bank transfers with audit trails to identify the beneficiaries of repayments;
- (d) The Noticee is prohibited from selling its assets, properties including mutual funds/shares/securities held by it 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 Point (a) above shall cease to operate upon filing of such report;

- (f) 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 (2) years** from the date of this order or till the date of filing of report, as directed in point (e) above, whichever is later;
- (g) The Noticee shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in Point (f) 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;
- (h) The Noticee is hereby imposed with penalty of **Rs.10,00,000/-**(Rupees One 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;
- (i) 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.

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

37. It is clarified that the direction for refund as given in Point 35(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.

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

39. A copy of this order shall be sent to the Noticee, all the recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents of Mutual Funds.

Date: June 27, 2024

Place: Mumbai

G RAMAR
QUASI JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA