

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of:

NOTICEE

Sandeep Subhashbhai Borse
14, Ganesh Krupa Building
Opp. Nana Nani Park,
Oak Baug, Station Road,
Kalyan West,
Thane, Maharashtra 421301

REGISTRATION NO.

INA000013952

BACKGROUND

1. Sandeep Subhashbhai Borse (hereinafter referred to as “**Noticee**”) is registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”), as an Investment Advisor with registration No. INA000013952.
2. Based on a complaint, SEBI conducted an examination in the matter. On the findings of such examination, SEBI initiated enquiry proceedings against the Noticee under Regulation 23 and Regulations 35(a), (b), (c) and (e) of the SEBI (Intermediaries) Regulations, 2008 (hereinafter also referred to as “**Intermediaries Regulations**”) for the alleged violations of the provisions of Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Regulation 3(1) and Regulation

6(f), 13(a) and 13(b) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter also referred to as “**IA Regulations**”).

ENQUIRY BY THE DESIGNATED AUTHORITY

3. A Designated Authority (*hereinafter referred to as “DA”*) was appointed by SEBI vide communique dated July 11, 2022 to conduct an enquiry against the Noticee and submit a report and make recommendations in compliance with Regulations 26, of the Intermediaries Regulations. Pursuant to transfer of said DA, SEBI appointed another DA in the matter vide communique dated September 5, 2022.
4. Accordingly, the newly appointed DA in terms of Regulation 25(1) of the Intermediaries Regulations issued Show Cause Notice dated November 07, 2022 (*hereinafter referred to as “Enquiry SCN”*) to the Noticee to show cause as to why appropriate recommendations be not made against the noticee for the following alleged violations:-
 - 4.1 While applying to SEBI for Certificate of Registration as an Investment Adviser, Noticee deliberately submitted to SEBI wrong information and concealed the fact that he was engaged in ‘investment advisory services’ prior to applying to SEBI for registration through his partnership firm.
 - 4.2 The noticee continued to operate his unregistered investment advisory through the partnership firm, even after obtaining SEBI registration as an ‘Investment Adviser’.
5. The SCN issued by the DA at the two available addresses of the Noticee returned undelivered. However, the Noticee replied vide email dated November 28, 2022 drawing reference to the SCN. Accordingly, an opportunity of personal hearing was granted to him on December 12, 2022, which on request of the noticee got rescheduled to December 26, 2022. The authorized representative of the Noticee, Mr. Abhishek Mishra attended the personal hearing alongwith the Noticee and made submissions.

6. During the enquiry proceedings, the Noticee vide email dated January 2, 2023 informed the DA, *inter alia*, that he would be filing a settlement application before SEBI w.r.t the said proceedings.

7. Upon completion of enquiry, an Enquiry Report dated February 28, 2023 ("**Enquiry Report**") was submitted by the DA to the Competent Authority with the following recommendation:-

"In view of the facts and circumstances of the case and material placed before me, having regard to orderly functioning of the securities market and protection of interest of investors, I recommend that the certificate of registration of the Noticee i.e Sandeep Subhashbhai Borse, SEBI Registration No:INA000013952, as an Investment Adviser be cancelled.

However, in light of Noticee's email dated January 02, 2023 indicating that '.....I would like to inform you that I have filed a settlement application against the said Notice vide uid:100199...' the recommendation as above may be considered having regard to the SEBI (Settlement Proceedings) Regulations, 2018, in particular Regulation 23(1) of the SEBI (Settlement Proceedings) Regulations, 2018."

POST ENQUIRY PROCEEDINGS BY THE COMPETENT AUTHORITY

Show Cause Notice, Reply and Personal Hearing

8. A post enquiry Show Cause Notice (**SCN**) dated April 3, 2023 was issued to the Noticee vide SPAD and email, enclosing therewith a copy of the Enquiry Report dated February 28, 2023 submitted by the DA and calling upon it to show cause in terms of Regulation 27 of the Intermediaries Regulations as to why action as recommended by the DA or any other action should not be taken against the

Noticee in terms of the said Regulations, as deemed fit by the Competent Authority.

9. The Noticee replied to the SCN vide email dated April 24, 2023 stating, *inter alia*, the following :-
 - 9.1 The Noticee would like to state that nothing contained in the Enquiry Report should be deemed to be admitted by virtue of it not having been specifically denied therein unless the same is specifically admitted.
 - 9.2 The Noticee reiterated and confirmed the contents of his reply dated January 2, 2023 filed before the DA.
 - 9.3 The Noticee reiterated that the objective of the firm was tax consultancy, education services in the financial market, other consultancy services. The website stockkhaj.com was launched with a motive to create a platform for the investors and registered market intermediaries wherein the role of SK Sales was just recommendation / advice through the Stockkhaj platform from the registered market intermediaries.
 - 9.4 He further stated that SK Sales was formed by noticee's wife and the noticee was having a stake of just 1% which is evident from the partnership deed. The noticee was never been involved in any kind of unregistered IA activities. Also, he had no role in the activities of SK Sales as the noticee had entered into the partnership just for the sake of forming a partnership firm. Moreover, the narrations in the bank statements are made by the clients who are normal investors and hence they have written 'trading tips', 'stock guidance', etc. while they were being provided services of educational and tax & other consultancy services. Further, the disclaimer was made in the invoice as the firm was engaged in providing education services in financial market and hence the said disclaimer was necessary to be made.
 - 9.5 The actual activity of the firm was not of investment advisory activity whereas it was regarding educational services and other consultancy

services. Also, the noticee had thereafter thought of establishing Stockkhoj as a platform for helping investors and registered intermediaries to come together. However, such platform could not continue as the firm faced difficulties in reaching upon a conclusion between the investors and the registered intermediaries. Also, the name Stockkhoj itself suggests 'in search of stock', so the firm was indeed helping investors in searching and getting right advice / recommendation through registered intermediaries. Further, in absence of any concrete evidence, it cannot be held that the Noticee and the firm was engaged in providing unregistered investment advisory activities.

- 9.6 The Noticee has stated that merely by virtue of being named as a partner, that too for just for 1%, it cannot be alleged that he has carried out acts on behalf of the partnership firm when one has not actually committed or done any activity. The noticee cannot be held liable for any alleged violation of law committed by the firm as he was a partner with just 1% stake in the firm. Noticee has also placed reliance on the judgment of Hon'ble Supreme Court in the matter of Sham Sunder v.State of Haryana, (1989) 4 SCC 630 wherein it was held that there may be partners who do not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners.
- 9.7 Since the firm SK Sales was facing difficulties in reaching a conclusion between the investors and the registered intermediaries, the noticee's wife (who was having control of the operations of the firm) suggested the noticee to take the SEBI registration. Later, in April 2019, the noticee himself had applied for registration with the SEBI as an IA and got the registration as IA in September 2019. Neither the noticee nor the firm had offered any investment advisory services to the investors prior to obtaining registration from SEBI.
- 9.8 The complainant himself had stated that he was not offered any investment advice and also SEBI does not have any complaint against the firm and

also no material on record has been established that the noticee and the firm were engaged in providing investment advice. The firm i.e SK Sales tried to contact the complainant for the refund of the service amount paid by him, however, the complainant did not respond stating that he had filed a complaint with SEBI. The Noticee has also produced few invoices of the payments received for taxation advisory.

- 9.9 The Noticee has not offered any investment advisory services to the investors prior to obtaining the registration from SEBI. The noticee while applying for registration had declared that “he was not involved in investment advisory services prior to making the said application”, which is true as he was not involved in offering any investment advice. Also the noticee had not hidden any unregistered IA activity from SEBI as he was not involved in the unregistered IA activity. The noticee started his operations as an IA only after obtaining registration from SEBI and has been following all applicable compliances.
- 9.10 The Noticee submitted that he has not violated any provisions and hence he is not liable for any action in terms of the Regulation 26(1)(ii) of the Intermediaries Regulations. He has carried out IA activities only after getting registered with SEBI as an IA.
- 9.11 The Noticee has also referred to the Order of Hon’ble SAT dated January 14, 2022 in the matter of *Ms. Suhanika Chourey*, wherein the findings of violations were set aside as there was no evidence brought out on record.
10. Thereafter, in the interest of natural justice, an opportunity of personal hearing was granted to the noticee before the Competent Authority on May 10, 2023 vide hearing notice dated May 3, 2023. On the scheduled date, the Noticee alongwith his Authorised Representative i.e Mr. Abhishek Mishra, attended the hearing in person and reiterated the submissions made in his reply dated April 24, 2023. In view of the pending settlement application by noticee, the instant proceedings were kept in abeyance .

11. However, SEBI rejected the instant settlement application of the Noticee in terms of Regulation 15(1) of the SEBI (Settlement Proceedings) Regulations, 2018 and the same was conveyed to the Noticee vide letter dated October 13, 2023. It is noted that the settlement application also included the enforcement proceedings initiated against the noticee under Section 11 and 11B of SEBI Act, 1992.

Pursuant to the rejection of settlement, I note that the Noticee was asked vide email dated November 1, 2023 if he wished to make further submissions including providing documentary proofs related to the educational services and tax consultancy and other consultancy services alongwith the break up of credits received in the HDFC Bank and ICICI Bank accounts including the names from whom the credits were received and the purpose for these credits. The Noticee was given time till November 8, 2023 to make his submissions which was on the request of the Noticee further extended till November 17, 2023. However, no further submissions have been made by the noticee.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully examined the allegations made against the Noticee and his reply to the post enquiry SCN and the documents / material available on record.

13. The issue that arises for consideration in the instant case is to examine whether the Noticee while applying to SEBI for certificate of registration as an IA, deliberately submitted wrong information and concealed the fact that he was already engaged in 'investment advisory services' through his partnership firm SK Sales, prior to applying to SEBI for registration and also continued to engage in unregistered IA services, even after obtaining the certificate of registration. It was alleged that the Noticee has violated Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013

and the provisions of Regulations 6(f), 13(a), and 13(b) of the SEBI (Investment Advisers) Regulations, 2013.

14. Before moving forward, I find it pertinent to refer to the relevant provisions of the SEBI Act, 1992 and the IA Regulations alleged to have been violated by the Noticees which are reproduced as under:

SEBI Act, 1992

“Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) 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.”

SEBI (Investment Advisers) Regulations, 2013

“Application for grant of certificate.

3. (1) 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.”

“

Regulation 6(f) of SEBI (IA) Regulations, 2013.

6. For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely,

(f) whether the applicant, its partners, principal officer and persons associated with investment advice, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

....”

Regulation 13(a) and (b) of SEBI(IA) Regulations, 2013.

13. The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-

(a) the investment adviser shall abide by the provisions of the Act and these regulations;

(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted...”

15. SEBI received a complaint against the website “<http://stockkhoj.com>”, wherein it was alleged by the complainant that Stockkhoj.com was not registered with SEBI as an Investment Adviser. The complainant had made a payment of Rs.40,000/- to Stockkhoj.com as registration fees to avail HNI services registration charges and the payment was made via the payment gateway i.e. Easebuzz. Complainant also mentioned that when the details of registration certificate was sought consequent to the payment of the said charges, the details were not provided by Stockkhoj.

16. SEBI in its examination did observe that there was a website with the domain name www.stockkhoj.com. In one of the documents submitted by the complainant, there was, *inter alia*, a copy of the invoice (Invoice No.SK/18-19/0150) which bore the names SK Sales, Stockkhoj and the website www.stockkhoj.com. It was further observed that SK Sales is a partnership firm formed by the Noticee and his wife. Neither the partnership firm ie.SK Sales nor Stockkhoj is registered with SEBI in any capacity. It was however noted that the Noticee is registered with SEBI as an Investment Adviser with registration No.

INA000013952 w.e.f September 16, 2019. The noticee was, however, granted registration in his individual capacity.

17. I note that the noticee in his reply has stated that the firm SK Sales was formed by the Noticee's wife with an objective of providing taxation and other consultancy services and the website stockkhoj.com was launched with a motive to create a platform for investors and registered market intermediaries wherein the role of SK Sales was just restricted to helping the investors in getting the right recommendations / advice.

18. I also note that SEBI during its examination had sought information pertaining to the transactions of SK Sales, Know Your Customer (KYC) details and Account Opening Form from Payment Gateway (Easebuzz), HDFC Bank and ICICI Bank. It was noted from the KYC that Payment Gateway (Easebuzz) was linked to HDFC Bank account (A/c No. 502xxxxxxxxx098) and the bank account was in the name of SK Sales and the email id talk@stockkhoj.com pertained to Stockkhoj.com. I further note that Easebuzz has blocked them on their platform since December 10, 2019.

19. Further, the copy of the invoice submitted by the complainant bears the names of SK Sales as well as Stockkhoj / www.stockkhoj.com / talk@stockkhoj.com (Invoice No SK/18-19/0150 dated November 01, 2018 for amount of Rs. 40,000/-). It is also observed from the copy of the said invoice that the same bore following words, '*(Kindly refer to detailed terms, conditions and disclaimers on the Company website www.stockkhoj.com)*'.

20. Hence, it is evident that SK Sales was providing its services through the website stockkhoj.com. Further, I note that the noticee has not disputed the fact that the partnership firm i.e. SK Sales and website i.e. stockkhoj.com are connected.

21. I note that the services provided through the website stockkhoj.com were not in the nature of general consultancy services or tax consultancy services as contended by the noticee but was rather related to securities markets. From the archived pages of the website stockkhoj.com, it is seen that the website contains the detailed periodicity based pricing details of the services offered by it for various categories of securities such as stock cash, stock future, stock option, index future. Further, the website claimed “*Stockkhoj provides you Trading Tips about the Indian stock Market with intense analysis done by their team of Analysts. We have been providing valuable Stock Tips to our clients through various methods. We have a team of Chart readers – technical analysts who tracks the market from its pre-opening to closing of the Market. Our team minutely observes every small movement in the market second to second.*”.

I further note that under “Our Services” there are services being provided for Equity, Commodity and Index as follows:-

“Equity : In stock cash tips we provide our clients accurate and timely intraday best stock tips which drive them to make maximum profit from the equity market. Calls are given for NSE Stock Cash Traders. We give the calls through SMS system which ensure instant delivery of calls so that you get enough time to enter the trade and make maximum profit.”

Commodity : Premium Stock Tips is especially designed for those traders who trade full time in stock cash, stock futures and Nifty future. Premium Stock Tips consists of Stock Cash Calls, Stock Futures & Nifty Futures calls. You would experience an excellence in this service and can feel the difference in our Customer service. In spite of many number of calls given to you the quality and accuracy of the calls will remain the same.

Index : Nifty Futures Tips is especially designed for those traders who trade in index futures. In Nifty Futures Tips we provide our client best Nifty Future and

Bank Nifty future calls along with the important support & resistance levels. In this pack we provide Nifty Future for current month.”

22. Further, the pricing for these services are also provided on the website. The website also states “*Low Investments – Big Profits*”, “*Best Trading Tips-Advisors & Specialists*”, “*We provide the Best Stocktips.*” The pricing chart of the various products / services under “*Our Pricing*” is reproduced hereunder:-

Category	Monthly	Quarterly	Half Yearly	Yearly
<i>Golden Marchent Clients</i>	₹ 118000	₹ 180000	₹ 300000	₹ 400000
<i>Stock Cash</i>	₹ 29000	₹ 72000	₹ 141000	₹ 210000
<i>Stock Future</i>	₹ 59000	₹ 118000	₹ 185000	₹ 265000
<i>Stock Option</i>	₹ 35000	₹ 85000	₹ 160000	₹ 250000
<i>Index Future</i>	₹ 35000	₹ 85000	₹ 160000	₹ 250000
<i>Index Option</i>	₹ 40000	₹ 95000	₹ 170000	₹ 265000

23. Based on the contents of the website of stockkhoj.com as detailed above, it is clear that stockkhoj was providing trading tips / advice about the Indian Stock market for consideration in terms of Regulation 2(m) of the IA Regulations which states “*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.”

24. The Noticee in his reply both before the DA and the competent authority has contended that the firm was formed by his wife (with a 99% share in the firm) and he has only 1% share in the partnership as is evident from the partnership deed and has no role in the activities of the firm. He has further stated that he has not ever been involved in any unregistered investment advisory services.

25. I have perused the bank statements of ICICI Bank and HDFC Bank of SK Sales. The narration in these bank statements includes terms such as “trading tips” “trading fees” “trading charges” “trading advisory” “stock guidance” “shares advic” “tips” “consultancy fee” “consultancy” “trading charged” “investment” “Registration for tips” “Trade” etc. Accordingly, going by the contents of the narration column as appearing the bank statements of SK Sales the same evidently are indicative of credits having been received by SK Sales relating to investment advisory. Extracts of entries appearing in the bank statements, as brought out by the DA in his report are being reproduced as under:-

Table 1 : ICICI Bank Account No. 187xxxxxx601 – SK Sales

Date_of_transaction	Narration	Debit_amount	Credit_Amount	Line_Balance
21-08-2019	BIL/INFT/001780747342/ Trading fee/		40000	294038
09-09-2019	MMT/IMPS/92521080976 5/trading fees/KING ROADW/KARU		5000	56875
27-12-2018	BIL/INFT/001606201511/ TradingAdvisory/SKSA LES/ICIC		10000	115630
14-01-2019	BIL/INFT/001620147826/ Advisory transf/SHUBHAM /I		8000	82509
15-07-2019	BIL/INFT/001754026078/ Advisory fees/		10000	198955
18-07-2019	BIL/INFT/001756049680/ Advisory fees/		10000	274355
19-07-2019	BIL/INFT/001756285940/ Advisory fees/		5000	284255

Date_of_transaction	Narration	Debit_amount	Credit_Amount	Line_Balance
20-02-2019	MMT/IMPS/90511704393 7/Tips/SENTHIL VA/CITY UNION B		5000	43170.5
03-04-2019	MMT/IMPS/90931513093 0/Consulting fee/NILESH C J/HD		3000	288290
04-04-2019	MMT/IMPS/90941213842 2/consultancy fee/NILESH C J/H		7000	695290
23-04-2019	MMT/IMPS/91131518725 5/consulting fee/NILESH C J/HD		2000	73672
24-04-2019	MMT/IMPS/91140915225 1/Consulting fee/NILESH C J/HD		3000	59668
17-05-2019	MMT/IMPS/91371512296 7/Consulting fee/NILESH C J/HD		3000	108563
22-05-2019	MMT/IMPS/91421213112 3/Consulting fee/NILESH C J/HD		5000	170063
21-08-2019	BIL/INFT/001780841335/c onsultancy/		25000	324038
13-05-2019	MMT/IMPS/91331016363 6/Consulting fee/NILESH C J/HD		2000	58563
18-06-2019	MMT/IMPS/91691436303 1/Stocks		3100	232064

Date_of_transaction	Narration	Debit_amount	Credit_Amount	Line_Balance
	guidance/ALOK KUMAR/H			
18-07-2019	NEFT- N199190879500531- RAJ KUMAR GUPTA- SHARES ADVIC		4900	279255
30-07-2019	BIL/INFT/001763661081/ti ps/		70000	467005
02-08-2019	BIL/INFT/001766826131/f ee/		2500	571508
14-03-2019	UPI/907309314852/One month fees/9321420731@upi /Cen		20000	81819.5
20-09-2019	MMT/IMPS/92631333190 0/To stockhoz/N S RAMA C/HDFC		10000	222918
20-09-2019	MMT/IMPS/92631610024 2/ADVISORY/N R MUKUND/HDFC BAN		5000	337918
21-09-2019	UPI/926415311366/Fees to Sinha/shrutillalam18@/ HDF		60000	434019
23-09-2019	MMT/IMPS/92660749560 8/fee/AMBIKA V /INDIAN BANK		50	444579

Date_of_transaction	Narration	Debit_amount	Credit_Amount	Line_Balance
23-09-2019	MMT/IMPS/92660849576 2/fee/AMBIKA V /INDIAN BANK		4950	449529
26-09-2019	MMT/IMPS/92691879554 5/trading fees/KING ROADW/KARU		28500	1062030
03-10-2019	MMT/IMPS/92751519819 0/MB: SHARE ADVIS/DHRUV JIGN/K		3000	1159697
10-10-2019	MMT/IMPS/92831951138 4/MB: SHARE ADVIS/DHRUV JIGN/K		1500	974972
15-10-2019	MMT/IMPS/92880761356 1/MB: SHARE ADVIS/DHRUV JIGN/K		1600	1051272
21-10-2019	MMT/IMPS/92942012700 6/Consulting fee/NILESH C J/HD		5500	1097687.7
24-10-2019	MMT/IMPS/92970810420 3/Fees/SAMBHAJI S/HDFC BANK LT		3000	1158987.7
30-10-2019	MMT/IMPS/93031019190 6/Partial Fees/SAMBHAJI S/HDFC		12000	1246487.7

Date_of_transaction	Narration	Debit_amount	Credit_Amount	Line_Balance
31-10-2019	MMT/IMPS/93041417253 7/ADVISORY/N R MUKUND/HDFC BAN		5000	1293987.7
04-11-2019	UPI/930809026361/Tips/r on.bharath@okh/Citiba nk		100	567318.7
04-11-2019	UPI/930810067508/Tips/r on.bharath@okh/Citiba nk		9900	577218.7
06-11-2019	UPI/931013735919/Cons ulting/apexjeya@oksbi/ State B		10000	621832.7
30-11-2019	BIL/INFT/001859150140/ Vishu fees/		80000	938745.7

26. Relevant extracts of HDFC Bank statement (which was linked to the payment gateway i.e. Easebuzz) showing narrations like 'trading charged', 'investment', 'registration for tips' are reproduced below:-

Table 2 : HDFC Bank Account No 502XXXXXXXXX098 – SK Sales

22/10/18	02351530012871-TPT-CONSLTNCY	000171045749	22/10/18	2,000.00	145,542.02
23/10/18	00301050017179-TPT-TRADING CHARGED	000182159853	23/10/18	12,500.00	505,619.21
24/10/18	IMPS-829713556962-M SURESH,S	829713556962	24/10/18	10,000.00	806,652.07
	KARTHIKA-HDFC-XXXXXXXX0366-INVESTMENT				
08/11/18	01221270000747-TPT-REGISTRAION FOR TIPS	000104231615	08/11/18	5,000.00	2,381,414.45

27. On a combined analysis of the archived copy of the website, the KYC details and narratives in the bank statements, it is seen www.stockkhoj.com was offering

advisory relating to securities market investments for a price/ fee and the same stand established from the narratives alongwith the credits in the bank account of SK Sales. Noticee has contended that they were normal investors who have written such narratives for providing services of educational and tax and other consultancy services. The fact that no investor has given a narrative such as payment for educational or tax consultancy only reaffirms that the payments were being made for the investment advice. Hence, I do not agree with the noticee that these were payments for other consultancy services. Further, I also note that such credits were made into the account of the partnership firm i.e SK Sales prior to and post the noticee having obtained the certificate of registration from SEBI.

28. Further, I also note the copy of the invoice submitted by the complainant contains the words, '*Trading in financial markets is a risky proposition*'. This read together with the other aspects as already dealt in the foregoing and in particular that the Noticee has himself submitted that, '*SK Sales was helping the investors in getting the right recommendation/advice through the Stockkhoj platform*', makes it evident that SK Sales was into investment advisory services for which it was offering various payment plans as offered through the website Stockkhoj.com under title 'our pricing'.

29. The DA in his report observed that the objective and actual activity of the firm were diverse and the likelihood of these being different cannot be ruled out i.e noticee stated that the objective of the firm was providing taxation and other consultancy services, however the noticee has not submitted as to what was the nature of activity undertaken by SK Sales. While denying this contention of SEBI, Noticee in his reply dated April 24, 2023 has stated that "*the actual activity of the firm was not investment advisory activity whereas it was regarding educational services and other consultancy services. Also, the Noticee thereafter had thought of establishing Stockkhoj as a platform for helping investors and registered intermediaries to come together..... Also the name Stockkhoj itself suggests "in search of stock".....*"

30. From the above, the Noticee is seen to have admitted that he established Stockkhoj. Also, the Noticee in earlier submissions stated that, '*SK Sales was helping the investors in getting the right recommendation/advice through the Stockkhoj platform*', which makes it evident that SK Sales was into investment advisory services for which it was offering various payment plans as offered through the website Stockkhoj.com under heading 'our pricing'. The Noticee has not provided any evidence to show as to how the firm was involved in education and other tax consultancy services except for a couple of invoices submitted by him pertaining to training on taxation/ filing of returns. On examination of these invoices, I note that the buyers / consignees pertain to various locations such as Nashik, Pune, Mumbai. The noticees have not demonstrated as to how these consignees in various cities were aware of business of the firm ie. the tax consultancy or filing of returns (as mentioned in the invoices). Apart from the invoices, the noticee has not provided any other independent evidence to prove that the firm was involved in other activities. I find that the noticees have neither provided any specific evidence to support their claim that they were engaged in providing tax consultancy / education considering that there are a large number of credits in the bank accounts. In fact, the archived webpages of the website of Stockkkhoj also do not mention anywhere that the firm was offering tax consultancy services. Rather, there is ample material on record to infer that the noticees were engaged in providing investment advisory services. The name 'Stockkhoj' also suggests that the website pertains to 'searching stocks'.

31. Hence, in the absence of convincing evidence provided by the noticee, I am inclined to agree with the findings of the DA that the firm SK Sales was into investment advisory services for which it was offering various plans as offered through the website under title 'our pricing' and the contention of noticee that the firm was formed by noticee's wife with an objective of providing taxation and other consultancy services is devoid of merit and cannot be accepted.

32. The Noticee has contended that merely by virtue of being named as a partner that too for 1% it cannot be alleged that he has carried out acts on behalf of the partnership firm. He has also placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Sham Sunder v.State of Haryana*, (1989) 4 SCC 630
33. It is a fact that Noticee is a partner in the partnership firm alongwith his wife i.e Kalyani Sandeep Borse. Further, from the partnership deed it is noted that the wife of Noticee and the Noticee are referred to as "party of the first part" and "party of second part" respectively. The deed also states that "*parties of the First and Second parts are desirous of carrying on the business in the partnership as Consultancy Services in the firm name and style of M/s. SK Sales on the terms and conditions contained therein.*" Further, "*Partnership between them is hereby constituted upon the terms and conditions hereto after expressed*".
34. From the partnership deed, it is noted that both the partners mutually agreed to start the partnership firm on the agreed terms and conditions as mentioned in the partnership deed viz., sharing of profit and loss, bank account of the firm may be maintained by any one of the two parties, partners shall be entitled to increase, reduce or waive the remuneration and may agree to revise the mode of calculating the remuneration etc. and both the partners are referred as "working partners". The deed also refers to the partners agreeing "*to devote their time and attention in the conduct of the affairs of the Firm as the circumstances and business needs may require....*".
35. Further, on verifying the Account Opening Form of SK Sales with HDFC Bank it is noted that with regard to operation of the bank account, the AOF states 'any one signatures below mention partner' and Sandeep Subhashbhai Borse being one of the two partners was the authorized signatory. The authorized email ID in the AOF

appears to be of the noticee i.e. sandeepsborse@gmail.com. I note the partnership deed states that the initial capital of the firm would be Rs.50,000/- and the same would be contributed in the profit sharing ratios of the partners (which is 99% by Kalyani Sandeep Borse and 1% of Sandeep Subhashbhai Borse). During the account opening formalities, the cheques for initial amount for opening of the bank accounts of SK Sales with both the banks i.e. HDFC Bank and ICICI Bank have only been provided by the Noticee himself i.e. Rs.51,000/- and Rs.50,000/- respectively. It is also observed from the AOF of SK Sales with ICICI Bank that the mode of operation was indicated to be 'severally' viz., the Noticee could independently operate the Bank Accounts. The total of the credits in the bank accounts of SK Sales with HDFC Bank and ICICI Bank was Rs. 3,98,02,342/- viz., approximately 3.98 crores. Hence, I concur with the DA that it is highly unlikely that a person who otherwise claims to be having no role in the activities of the firm would be one of the signatories of the Bank Accounts of the same firm that too on 'several' basis and where the credits happen to be in the range of crores of rupees. Based on the available evidence, I agree with the views of the DA that although the partnership of the noticee as per the partnership deed was 1%, for all practical purpose it is evident that noticee was actively involved with the firm.

36. The Noticee has also cited the judgement of the Hon'ble Supreme Court in the *Sham Sunder v. State of Haryana, (1989) 4 SCC 630* wherein it was held that there may be partners who do not know anything about the business of the firm. The case law and violations referred by the noticee is not comparable with the present proceedings as the facts in both the cases are different. As brought out in the above preceding para, I note that the noticee was actively involved in the partnership firm and also was the authorized signatory of the bank accounts of the firm. In the absence of any evidence, just a bald assertion by the noticee that he did not know anything about the business of the firm is not sufficient to absolve him of the violations. Besides as per Sections 2(a), 4, 18 and 25 of the Partnership Act, 1932 and Section 27 of the SEBI Act, 1992, every partner is liable, jointly with

all the other partners and also severally, for all acts of the firm done while he is a partner and miniscule shares in the partnership or non participation in the decision making do not absolve such partners from their liability. Hence, every partner shall be liable irrespective of the capital contribution and the contention that Noticee was only having 1% stake in the partnership firm does not absolve him from the liabilities of the firm.

37. The Noticee in his written submissions dated April 24, 2023 in the instant proceedings has stated inter alia, “.....*the actual activity of the firm was not of investment advisory activity whereas it was regarding educational services and other consultancy services. Also the Noticee then thereafter had thought of establishing Stockkhoj as a platform for helping investors to come together. However, such platform could not be able to continue as the firm faced difficulties in reaching upon a conclusion.....*”(emphasis added)

38. Although the Noticee has contended that he had no role in the activities of SK Sales, it is clear from the above that the Noticee was aware of the functioning of the firm in addition to his being actively involved in the opening of the firm’s bank accounts. As per the Partnership Deed while terming the Noticee as a “Working Partner” the partners had agreed “*to devote their time and attention in the conduct of the affairs of the Firm as the circumstances and business needs may require.....*” Hence, I am not inclined to accept the submissions of the Noticee that he was not involved in the affairs of the partnership firm ie. SK Sales. Besides partnership as defined in terms of Section 4 of the Partnership Act, 1932 states “*Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all*”. The Noticee cannot now absolve himself from the activities of the firm.

39. I note that the Noticee was registered as an Investment Advisor with SEBI with Registration No. INA000013952 since September 16, 2019. The deed of

partnership w.r.t SK Sales between the noticee and his wife Mrs. Kalyani Sandeep Borse is dated as September 15, 2018. Further, from the documents submitted by the banks, the account opening dates in HDFC Bank and ICICI Bank is October 09, 2018 and October 24, 2018 respectively. Therefore, it is evident that the firm SK Sales and the bank accounts connected with it were existing even prior to the noticee seeking registration with SEBI. Further, the narrations in the bank statements, as already stated above, evidences the fact that the firm was providing investment advisory services. Hence, SK Sales was engaged in providing investment advisory services prior to the Noticee getting registered as an Investment Advisor with SEBI, in which the noticee was an active partner. Neither SK Sales nor stockkhaj were registered with SEBI in any capacity. Therefore, it is established beyond doubt that the Noticee was into investment advisory through his partnership firm SK Sales without obtaining certificate of registration for the partnership firm as an investment advisor from SEBI.

40. The noticee has argued that complainant himself has stated about him not being offered any investment advice and that SEBI has not received any complaint against the firm and no material on record has been established that the noticee and the firm was engaged in providing investment advice. The noticee also stated that the firm tried to contact the complainant for the refund of service amount paid by him, however, the complainant did not respond stating that he has filed his complaint with SEBI.

41. I note that the noticee has contended that apart from the complaint filed by complainant there are no complaints against him. In this regard it may be noted that a complaint is just a trigger for SEBI to examine whether the securities laws are being violated. During examination, SEBI had written to the noticee and the firm operated by him seeking information related to its investment advisory activities, perused the archived webpages, collected information from the payment gateway, obtained the KYCs and AOFs from the banks and collected evidence.

Only after finding that there is reasonable and sufficient material indicative of the Noticee undertaking unregistered activities through the partnership firm, the proceedings were initiated. One of SEBI's mandate is to protect the interests of investors in the securities market as well as to regulate it. Rather, the submissions of the firm that it has tried to contact the complainant for the refund of the service amount reinforces the allegation made by the complainant that he had given money to the firm in lieu of advice to be provided to him.

42. It has also been alleged that the Noticee while applying for grant of registration as an IA with SEBI, deliberately submitted wrong information and concealed the fact that he was engaged in unregistered investment advisory services prior to applying to SEBI for registration and had also continued to engage in unregistered investment advisory services through his partnership firm even after obtaining SEBI registration. The noticee has denied these allegations.

43. I note from the available records that the partnership deed was executed on September 15, 2018 and the date of opening of bank accounts by M/s SK Sales is October, 2018. Both the dates are prior to the date of registration of the Noticee i.e Sandeep Subhashbhai Borse as Investment Adviser (date of registration was September 16, 2019). Further as per Bank statement of SK Sales of ICICI Bank (see table no. 1) and HDFC Bank (see Table 2) there are several credit entries (ie. with narratives such as 'tips', 'trading advisory, etc.) that are dated prior to September 16, 2019 regarding trading advisory services. I, also note that there are credits with such narratives in this account even after September 16, 2019. Further, I note that the Noticee has sought registration as an individual but has carried out IA activities through his partnership firm which was not registered with SEBI. I have also perused the "Business Plan" submitted by the Noticee at the time of seeking registration as an IA wherein he has submitted "*I will run the Investment Advisory Individually on the name of Sandeep Subhashbhai Borse.*" As per submissions at the time of registration, with respect to communicating with

customers, the noticee has stated that this would be done through online ticketing system for support, email support, telephone support, SMS or online support. However, it is noted that the Noticee has carried out the IA services through the partnership firm, which was linked to Stockkhoj website. Therefore, I find that Noticee i.e Mr Sandeep Subhashbai Borse had deliberately hidden the fact that he has carried out unregistered investment advisory activities through his partnership firm i.e. SK Sales using the Stockkhoj website.

44. The noticee has also referred to the order passed by Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Suhanika Chourey* wherein according to the noticee, the SAT set aside the order as there was no evidence brought on record. The aforesaid case law referred by the noticee is not comparable with the present proceedings, as I note from the preceding paragraphs that sufficient evidence is available on record to show that the noticee was engaged in providing investment advisory services without obtaining the necessary registration from SEBI. Further, in the case w.r.t *Suhanika Chourey* referred by the Noticee, the Hon'ble SAT has only dropped the charges of fraud due to lack of sufficient evidence and has in fact upheld the SEBI findings w.r.t the unregistered investment advisory activities of the appellant.

45. I further note that the noticee by aforesaid acts have undermined the registration process specified in the IA Regulations. Registration process, among other things, takes into account various aspects pertaining to the applicant including the qualification and certification requirement, 'fit and proper person' criteria, etc. In fact the criteria vary for individuals and partnership firms/body corporates. The Noticee by carrying out the business of investment advisory through the unregistered firm has circumvented *inter alia* the registration requirements specified in the IA Regulations. Although being granted registration in his individual capacity, the Noticee has not only conducted the investment advisory firm through the unregistered firm prior to grant of registration, but has continued to carry out

the investment advisory services through the unregistered firm even after being granted registration. The noticee continued with the violation till the time the same was detected by SEBI, which is very serious in nature.

46. In the light of above facts and circumstances, I concur with the following findings of the DA i.e.

46.1 The partnership firm existed prior to noticee having obtained a certificate of registration from SEBI.

46.2 There is a connection between SK Sales (wherein the Noticee is a partner) and Stockkhoj.

46.3 SK Sales was offering investment advisory services through the Stockkhoj platform for consideration. There were credits in the bank accounts of SK Sales, narration of which is reflective of receipt of amount relating to securities market investments. It is also established that such credits happened prior to and post the Noticee having obtained certificate of registration from SEBI.

46.4 The Noticee was one of the two partners in the firm SK Sales (the other partner being wife of the Noticee). Accordingly, it is established that the Noticee being partner of SK Sales was into investment advisory through SK Sales /Stockkhoj prior to and post his having obtained certificate of registration from SEBI.

46.5 The contention of the noticee that he had no role in the partnership firm is not acceptable in the light of findings given above.

46.6 The Noticee while applying for certificate of registration as an investment adviser concealed the fact that he was associated with partnership firm SK Sales which was already engaged in unregistered investment advisory activities. Such acts of concealment of crucial information that of being engaged in unregistered activities do not reflect positively upon the integrity, honesty, ethical behavior, reputation, fairness and character of the person

and may pose serious risk to the orderly functioning of the securities market and interests of the investors which needs to be viewed seriously.

46.7 Accordingly, the noticee has violated Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) and Regulation 6(f), 13(a) and 13(b) of the SEBI (Investment Advisers) Regulations, 2013.

47. I further also note that proceeding under Sections 11(1), 11(4), 11B(1), 11(4A) and 11(B)(2) of the SEBI Act, 1992 for violating Regulation 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 has also been conducted against the Noticee. Vide an Order dated December 28, 2023 which has been passed, it has been clearly established that the noticee was an active partner in the partnership firm i.e. SK Sales which was carrying out unregistered investment advisory activities. Vide the said order, directions for refund of the amounts collected through the unregistered IA activities and penalty have also been imposed on the noticee.

48. Having found that the noticee has violated Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 and the provisions of Regulations 6(f), 13(a), and 13(b) of the SEBI (Investment Advisers) Regulations, 2013 and considering the gravity of the violations, I find it is a fit case for cancellation of registration of Noticee 1 as recommended by DA in the Enquiry Report.

DIRECTIONS

49. In exercise of the powers conferred upon me in terms of Section 12(3) read with Section 19 of the SEBI Act, 1992 and Regulation 27 of the SEBI (Intermediaries) Regulations, 2008 and after considering the gravity of the violations committed by

the Noticee as noted in the preceding paragraphs, I hereby cancel the Certificate of Registration (bearing No. INA000013952) of Mr.Sandeep Subhashbhai Borse.

50. The above direction shall not preclude the Noticee from redressing the grievances of its clients and / or refunding the monies to its clients, as the case may be.

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

52. A copy of this order shall be served on the Noticee and BSE Administration and Supervision Limited (BASL).

DR. ANITHA ANOOP

Date: December 29, 2023

CHIEF GENERAL MANAGER

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA