

## 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.	M/s Bourse India Investment Advisor	AANFB7695P
2.	Mr. Shenkey Chaurasia Partner- M/s Bourse India Investment Advisor	ATJPC5720H
3.	Mr. Aakash Joshi Partner- M/s Bourse India Investment Advisor	AINPJ4355Q
4.	Mr. Hariom Sharan Patel Partner- M/s Bourse India Investment Advisor	BFLPP9443M
5.	Mr. Gaurav Kumar Partner - M/s Bourse India Investment Advisor	CSTPK6551R

In the matter of Unregistered Investment Advisory Activity by Bourse India Investment Advisor.

---

**BACKGROUND**

1. Securities and Exchange Board of India (“**SEBI**”) had received a complaint on its SCORES platform vide Complaint no. SEBI/KN16/0000244/1 dated June 03, 2016 against a SEBI registered Investment Adviser (“**IA**”) namely BIS Capital

Investment Advisor (“**BIS Capital**”) wherein Mr. Shashidhara N. (“**Complainant**”), has *inter-alia*, alleged that he has been cheated by a company called “Bourse India Advisory” (hereinafter referred to as “**Noticee 1**” / “**Bourse India**”), as the Complainant has not been given proper service. Complainant further alleged that he had paid a fee of Rs. 1,50,000 to the said company for investment advice and later lost Rs. 1,20,000. The Complainant had also enclosed the screenshot of the company’s website with his complaint.

2. Pursuant to the receipt of the said complaint, SEBI conducted examination into the activities of the Noticee 1 to ascertain whether there has been any violation of provisions of Securities and Exchange Board of India, 1992 (“**SEBI Act**”) and Regulations made thereunder.
3. On examination, it was noticed that the website of the entity as mentioned in the complaint - [www.bourseindia.com](http://www.bourseindia.com), was found to be inactive. Accordingly, the archived pages of the website were downloaded from web.archive.org to gather information Screenshots of the webpages.
4. The website [www.bourseindia.com](http://www.bourseindia.com) claims to be providing services as a Stock Advisory Company in Indore and inter-alia claims to provide trading analysis, Bourse India also claims to provide experts Recommendations for Stock Cash, Stock Futures, Stock Options (both NSE and BSE) and Commodities (MCX & NCDEX) and FOREX Segments.
5. The said website also mentions the consideration details for availing services in respect of various segments like Equity, Equity Derivative, Index Derivative, Commodity, Currency Derivative etc., and these packages ranged from INR 6,500/- to INR 1,75,000/-.
6. During the course of the examination, SEBI found that the Noticee 1 was holding bank account(s) with ICICI bank and State Bank of India (SBI). SEBI sought details such as KYC, Account Opening Form (AOF) and bank statement from

ICICI Bank and State Bank of India in respect of the Noticee 1's bank accounts. The website also provided option to make payments via payment gateway EBS. Accordingly, information was also sought by SEBI from EBS.

7. EBS vide email dated July 03, 2020, submitted the merchant application form, KYC, transaction statement and other details pertaining to the Noticee 1. These documents furnished by EBS revealed the following regarding the Merchant account held with it:

**Table 1**

<i>Company name: Bourse India Investment Advisor</i>
<i>PG website: <a href="http://www.bourseindia.com">www.bourseindia.com</a></i>
<i>Contact person name: Mr. Hariom Sharan Patel</i>
<i>Contact person Email ID: <a href="mailto:hariom@bourseindia.com">hariom@bourseindia.com</a></i>
<i>Contact person Mobile No.: XXXXXX4759</i>
<i>Business Address: EB-303, Scheme-94, In front of Bombay Hospital, City - Indore, State - Madhya Pradesh, PIN – 452001.</i>
<i>Email: <a href="mailto:info@bourseindia.com">info@bourseindia.com</a></i>
<i>Tel No.: 0731-XXX6071</i>
<i>Date of incorporation: 16/04/2014</i>
<i>Brief description about the products / services you intend to sell online – Equity / Equity Derivatives / Commodities / Currency Derivatives Services</i>
<i>PAN: AANFB7695P</i>
<i>Business filling status: Partnership</i>

8. The copy of the document submitted to EBS at the time of registration inter-alia contained KYC details of partners of Bourse India Investment – Mr. Shenkey Chourasia (**'Noticee 2'**), Mr. Aakash Joshi (**'Noticee 3'**), Mr. Hariom Sharan Patel (**'Noticee 4'**) & Mr. Gaurav Kumar (**'Noticee 5'**). (hereinafter Noticee 1 to 5 are collectively referred to as **'Noticees'**).

9. SEBI examined the documents on record, Bank statements, communication(s) with the Banks and EBS and the website bearing URL [www.Bourseindia.com](http://www.Bourseindia.com).

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

10. On the basis of findings of the examination, SEBI issued show cause notice dated July 20, 2022 (“**SCN**”) to the Noticees which, inter-alia, stated as follows: -

- i. SEBI received a complaint on its SCORES platform against a SEBI registered IA i.e., BIS Capital Investment Advisor wherein, the complainant has *inter-alia*, alleged that he has been cheated by Bourse India, as the complainant was not given proper service. The Complainant had also enclosed the screenshot of the company’s website with his complaint.
- ii. Upon examination, the website [www.bourseindia.com](http://www.bourseindia.com) was found to be inactive. Hence, archived pages were downloaded. Excerpts from the website are given below:

*(a) Welcome To Bourseindia.Com - Stock Advisory Company In Indore- BourseIndia Financial Services is newly incorporated Indian Trading Analysis Providing Company with an investment philosophy Focused on delivering superior performance through strong ethics of professionalism and productivity. We always strive for professional excellence in the execution of all our Activities by having a updated view of customer’s requirements. we believe in integrity which gives us a notion and Enthusiasm to conduct our business by providing high return to our investors. As we have a deep-rooted understanding of Indian Capital markets it is our core responsibility to provide the institutionalize trade pattern to our clients.*

*Why Choose Us?-As a company we have been providing services for long-time for longtime.*

*We Reach Global-we are committed to strengthen our competitiveness through a focus on Global economic growth.*

*OUR MISSION-Our goal is to become the preferred company to all of our traders and investors.*

- (b) We Follow “Know your Client” Principle. Along with Analysis we believe that we need to synchronize the Dreams of Our Clients with their Financial Situation by presenting the optimized Investment Services We understand very well about the complexities a trader faces right from receiving the expert advice till the execution of the trade. We very well understand the importance of Speed, Accuracy and consistency at which message is to be passed to the trader in order to maximize the benefits.*

*Bourse India provides experts Recommendations for Stock Cash, Stock Futures, Stock Option and traded in both NSE and BSE. Our Expertise also lies in Trading in all form of Commodities (MCX & NCDEX) and FOREX Segments.*

#### *EQUITY DERIVATIVE - STOCK FUTURE*

*Basic Stock Future- Derivatives are specifically and relatively new and advanced financial instruments in the Indian stock market. Besides the fact that it needs more risk management, this product generates the highest number of trades, its being the solemn instrument, in which the financial institutions trade. In this service BourseIndia provides intraday Basic stock futures trading tips to traders. Our research team works extensively in identifying the movement in future market on intraday basis and provides traders with intraday trading recommendations to enable them to earn maximum returns with nominal risk tolerance. The service features of this package follows:*

##### *Service Features*

- Intraday tips in Equity Future traded in NSE/BSE*
- We provide you around 3-4 Intraday Future Market call*
- Recommended Investment of up to Rs  $\geq$  50,000 as margin money*

- *Updates on important news & information*

*Live market tips-Via SMS, Yahoo Messenger.*

*Sample Call-Basic Future: BUY PNB IN NSE FUTURE ABOVE 740  
TGT 744, 750 SL 736*

*Updates- Basic Future: BUY PNB IN NSE FUTURE DID OUR  
FIRST TGT OF 744. BOOK PARTIAL PROFIT*

- iii. From the archived pages of the said website, it was noted that the Noticee 1 claims to be providing services as a Stock Advisory Company in Indore and inter-alia claims to provide trading analysis, experts Recommendations on Stock Cash, Futures & Options (both NSE and BSE), Commodities (MCX & NCDEX) and FOREX Segments.
- iv. The said website also carries the consideration details for availing of services in respect of various segments like Equity, Equity Derivative, Index Derivative, Commodity, Currency Derivative etc., and the consideration for these packages ranged from INR 6,500/- to INR 1,75,000/-.
- v. The website mentions the following Bank accounts for making payment:
  - a. A/c No. 091XXXXX0399 - ICICI Bank (M/s Bourse India Investment Advisor)
  - b. A/c No. 33XXXXXX2040- State Bank of India (M/s Bourse India Investment Advisor)
- vi. The website also provides options to make payments via payment gateway EBS. Accordingly, information was sought by SEBI from ICICI Bank, State Bank of India and EBS. EBS vide email dated July 03, 2020, submitted the merchant application form, KYC, transaction statement and other details pertaining to the Noticee 1. The aforesaid documents furnished by EBS revealed certain details regarding the Merchant account held with it, as provided at Table 1 above.
- vii. From the information received from ICICI Bank, SBI and EBS, it was learnt that, Bourse India Investment advisor was a partnership firm, with Noticee 2, 3, 4 and 5 as its partners.

viii. From the transaction statement submitted by EBS, it was observed that during the period from May 22, 2014 to January 13, 2017, credits amounting to INR 1,14,30,923/- were received in the merchant account of Bourse India Investment Advisor / BIS Capital Investment Advisor (*as per the amendatory agreement, after September 10, 2015, credits were received in the name of BIS Capital Investment Advisor*), which included the payments made by the complainant to the account opened and owned by Noticee 1.

ix. From the total credits received as per the bank statements received from ICICI & SBI, it is observed that Noticees have mobilized INR 1,06,79,486/-

**Table 2**

<u>S. No.</u>	<u>A/c Name</u>	<u>A/c Number</u>	<u>Period of statement</u>	<u>Credits received (in INR)</u>	<u>A/c closure date</u>
<u>1.</u>	M/s Bourse India Investment Advisor	091XXXXX0399 (ICICI Bank)	10/05/2014 to 12/01/2016	83,94,221.70/-	12/01/2016
<u>2.</u>	M/s Bourse India Investment Advisor	33XXXXXX2040 (SBI)	15/07/2014 to 02/12/2015	22,85,265/-	02/12/2015
<b>Total</b>				1,06,79,486.70/-	

x. As per the “Whois” report retrieved from website-DomainBigdata.com, it was observed that the website creation date for the websites of Bourse India & BIS Capital are:

**Table 3**

<b>Entity Name</b>	<b>Website URL*</b>	<b>Creation date</b>
Bourse India	<a href="http://www.bourseindia.com">www.bourseindia.com</a>	March 09, 2014
BIS Capital	<a href="http://www.biscapital.com">www.biscapital.com</a>	May 15, 2015

*\*Both the websites are currently inactive*

11. Based on the facts stated in the said SCN, it was alleged that the Noticee 1 was holding itself out as an investment adviser, it was *alleged* that the Noticees viz., Bourse India & its partners viz. Mr. Shenkey Chaurasia , Mr. Aakash Joshi, Mr.

Hariom Sharan Patel & Mr. Gaurav Kumar were engaged in 'investment advisory' activities without obtaining the registration from SEBI as an investment adviser. It was alleged that the amounts credited in the bank accounts of the Noticee 1 were received as fees towards the services rendered as an investment adviser. Therefore, the Noticees have been alleged to have violated Section 12(1) of the SEBI Act and Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (**"IA Regulations"**). Further, the Noticees through the website viz. [www.bourseindia.com](http://www.bourseindia.com), knowingly misrepresented that it is a stock advisory company which provide expert recommendations for Stock Cash, Stock Futures, Stock Options, etc., and have concealed the truth that it was not authorized to make recommendation and provide advisory services to investors to deal in securities market without obtaining registration from SEBI and, therefore, have induced the general public to deal in securities. The said activities were, *prima facie*, fraudulent and fall under the definition of 'fraud' under Regulation 2(1)(c) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trading Practices in Securities Market) Regulations, 2003 (**"PFUTP Regulations"**). Therefore, it was alleged that the Noticees have violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k) of the PFUTP Regulations. Therefore, the Noticees were called upon to show cause as to (i) why suitable directions, under Sections 11, 11B(1) and 11(4) read with Section 11(1) of SEBI Act, including directions for refund of fees of Rs. 1,06,79,486/- taken towards investment advisory activities without obtaining registration from SEBI, should not be issued against the Noticees and (ii) why inquiry should not be held against them in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and suitable directions for imposing penalty under Sections 11B(2) and 11(4A) read with Sections 15HA and Section 15HB of SEBI Act should not be issued against the Noticees for the aforesaid violations.

12. SCN dated July 20, 2022 was served on the Noticees through speed post at their respective addresses and also for Noticee 1 to Noticee 4, through News paper publication dated September 07, 2022 in Indore editions of Nai Dunia (Hindi



Daily), Times of India (English Daily) and also in Rewa edition of Dainik Jagran (Hindi Daily). In response, vide email dated February 19, 2023, Noticee 3 and Noticee 4 submitted a response authorizing Advocate Mr. Avinash Tripathi as their Authorized Representative ('AR'), and sought personal hearing. Later, vide email dated March 21, 2023 Advocate Mr. Avinash Tripathi stated that he shall be the AR for the Noticee 3, Noticee 4 and Noticee 5 and submitted their respective replies. The Noticee 3, Noticee 4 and Noticee 5 have submitted identical replies and have inter-alia made the following submissions:

- i. *The Noticee 2 to 5 had carried out the alleged Investment Advisory Service through Bourse India only between 10.05.2014 to 16.08.2015 thereafter they joined/started BIS capital Investment adviser, which was a sole proprietorship (Prop: Noticee 4) which had obtained a valid SEBI Investor Adviser Registration i.e., SEBI Registration No. IN000003346.*
- ii. *Providing Investment Advisory was never considered to be falling within the scope of the definition of "dealing in securities" as defined at Regulation 2 (1) (b) and consequently would not fall within the scope of "fraud" as defined at Regulation 2 (1) (c). The said understanding flows from 2018 Amendments to the PFUTP Regulations that the addition of Regulation 2 (1) (b) (ii) thereby introducing the words "acts which may be knowingly designed to influence the decisions of investors " were done specifically to bring Investment advisory services within the scope of the definition of dealing with securities and consequently bringing the same within the definition of fraud.*
- iii. *So far as the alleged violation of Regulation 4 (1) & 4 (2) (k) are concerned, prior to the amendment Regulation 4 (2) (k) prohibited making of advertisement which may influence the decision of the investors. However, the same would not bring within its fold the Investment Advisory service, which is evident from a reading of the language introduced by the 2018 Amendment to the PFUTP Regulation i.e., disseminating information or advice through any media, which is likely to influence the decision of investor dealing in securities.*
- iv. *Notably, the amendment was introduced w.e.f. 01.02.2019 and cannot be made retrospectively applicable.*

- v. *Being unaware of the requirements and under the honest mistake of fact, and in good faith Noticee 3 to Noticee 5 believing it to be a legitimate business activity, permissible by law, started Bourse India. Upon becoming aware, immediately registered and obtained the Investment Advisor registration on 18.08.2015 and thereafter, all the activities of Investment Advisory were carried out by BIS Capital Investment Adviser.*
- vi. *The advice given through Bourse India to its clients was purely on the basis of technical analysis with the bona fide intention to optimize their gains in the securities market. The advice given to the clients were at arm's length and Our Client/Noticee did not have any direct or indirect relation/involvement/collusion with the companies.*
- vii. *In respect of those who were dissatisfied with the services, Bourse India promptly acted on their concerns and in most cases refunded the amount.*
- viii. *While Bourse India ceased its operations the account of Bourse India was continued to be used for receiving remuneration for the services rendered by BIS Capital Investment Advisor. Accordingly, it is submitted that the figure of Rs. 1,06,79,486/- shown as the fee received by Bourse India is not correct. The detailed figure showing the correct value of the sum received towards services rendered by BIS Capital Investment Advisor in Bourse India is provided herewith.*
- ix. *Multiple deposits made by Our Client/the Noticee and his partners in the account of Bourse India are also being treated as fee received by Bourse India for providing its services. The details of such deposits are annexed herewith.*
- x. *That in so far as the complaint filed by Mr. N Shashidhara is concerned, we are willing to refund the amount so received from him.*
- xi. *That your good office is urged to take a considerate view of the entire case in view of the peculiar facts and circumstances of the case and also considering the fact that no loss has been caused to the investor or securities market as a result of the default.*

13. It is noted that, although the SCN was served through SPAD at the address of the Noticee 2 at 273, Hirdenagar, Tehsil- Mandla, Madhya Pradesh – 481661 and also through abovementioned publication as detailed at para 12. It is noted that,

Hearing Noticees dated October 13, 2022, April 18, 2023, June 30, 2023 and July 10, 2023 were also sent to the Noticee 2 via SPAD however, the same were returned to SEBI, with remark of the postal department in hindi language meaning *“Addressee refused to collect, hence returned to sender”*. In this regard, reference is drawn to the order of Hon’ble SAT in the matter of Bhargav Ranchhodlal Panchal Vs. SEBI (Appeal No. 466 of 2021) dated February 2, 2023, wherein Hon’ble SAT has held that *“we find that when the order which is sent by post is refused then there is a deemed presumption of sufficient service upon the appellants. This presumption of service is, however, rebuttable.”* I note that refusal to accept notice is considered deemed service. Further, Hearing Noticees dated October 13, 2022, April 18, 2023, June 30, 2023 and July 10, 2023 were also duly sent to the Noticee 2 via email to [shenkey06@gmail.com](mailto:shenkey06@gmail.com), which was available on record. However, neither any reply was received from the Noticee 2, nor did he appear for the scheduled hearings.

14. In the interest of natural justice, opportunity for personal hearing was granted to the Noticees on July 17, 2023. The AR for Noticee 3, Noticee 4 and Noticee 5 appeared and stated that he is also representing Noticee 1. The AR reiterated the respective submissions made in the letter dated March 21, 2023 for Noticee 3, Noticee 4 and Noticee 5. No specific submissions were made for Noticee 1.
15. I note that sufficient opportunities of filing reply to the SCN and hearing have been given to the Noticee 2, however, the Noticee 2 has failed to reply or to appear in hearings. Accordingly, the matter is proceeded ex-parte with respect to the Noticee 2 on the basis of the documents and information available on record.

### **CONSIDERATION OF ISSUES AND FINDINGS**

16. I have considered the material available on record including application, the SCN, Bank statements, KYC documents, Account opening forms, transaction statement, client list, refund receipts etc.

17. I note that one of the allegations against the Noticees is that the Noticees acted as investment adviser without obtaining certificate of registration from SEBI, thereby the Noticees violated Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations. Further, the Noticees, inter-alia, claimed on the website [www.bourseindia.com](http://www.bourseindia.com) that *“Bourse India Financial Services is newly incorporated Indian Trading Analysis Providing Company with an investment philosophy Focused on delivering superior performance through strong ethics of professionalism and productivity. We always strive for professional excellence in the execution of all our Activities by having a updated view of customer’s requirements. we believe in integrity which gives us a notion and Enthusiasm to conduct our business by providing high return to our investors. As we have a deep-rooted understanding of Indian Capital markets it is our core responsibility to provide the institutionalize trade pattern to our clients.”*. The Noticees, despite having no registration from SEBI in any capacity had portrayed itself as an Investment Adviser. It was also alleged that the misleading representations by the Noticees are deceptive and fraudulent in nature, and falls within the purview of the definition of “**fraud**” defined under Regulation 2(1)(c) of the PFUTP Regulations. Therefore, it was alleged that the fraudulent activities / conduct / act / practice of the Noticees are in violation of Regulations 3(a),(b),(c),(d),4(1) and 4(2)(k) of PFUTP Regulations. I note that following issues arise for consideration in the present case: -

- A. Whether the Noticees 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 alleged fraudulent activities / conduct / act / practice of the Noticees, as mentioned above, is/are in violation of provisions of Section 12A(a), (b) and (c) of SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(k) of PFUTP Regulations?**
- C. If answers to issue no. A and/or B are in the affirmative, what penalty and/or directions should be passed against the Noticees?**

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

**SEBI Act**

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

**Section 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:"*

**Section 12(A) (a), (b), (c)**

*Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control*

*12A. 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 recognised 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 recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder*

**IA Regulations**

**Regulation 2(1)(g)**

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

**Regulation 2(1)(l)**

*“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)**

*“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)**

*“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.”*

**PFUTP Regulations, 2003**

**Regulation 2(1)(c) of PFUTP Regulations**

*“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,...*”

**Regulation 3(a), (b), (c) and (d) of PFUTP Regulations**

*“3. 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 recognized stock exchange in contravention of the provisions of the Act.*

**Regulation 4(1) and 4(2) (k) of PFUTP Regulations:**

*4(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.*

*[Explanation.— For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]*

*4(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.*

**\*\* The provisions was substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities**

Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019 and before the said substitution the provision read as follows:

*"an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors".*

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

19. 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.

20. I note that the Noticees through its website i.e. [www.bourseindia.com](http://www.bourseindia.com) claimed as follows:-

*Welcome To Bourseindia.Com - Stock Advisory Company In Indore- BourseIndia Financial Services is newly incorporated Indian Trading Analysis Providing*



*Company with an investment philosophy Focused on delivering superior performance through strong ethics of professionalism and productivity. We always strive for professional excellence in the execution of all our Activities by having a updated view of customer's requirements. we believe in integrity which gives us a notion and Enthusiasm to conduct our business by providing high return to our investors. As we have a deep-rooted understanding of Indian Capital markets it is our core responsibility to provide the institutionalize trade pattern to our clients.*

*Why Choose Us?-As a company we have been providing services for long-time for longtime.*

*We Reach Global-we are committed to strengthen our competitiveness through a focus on Global economic growth.*

*OUR MISSION-Our goal is to become the preferred company to all of our traders and investors.*

*We Follow "Know your Client" Principle. Along with Analysis we believe that we need to synchronize the Dreams of Our Clients with their Financial Situation by presenting the optimized Investment Services*

*We understand very well about the complexities a trader faces right from receiving the expert advice till the execution of the trade. We very well understand the importance of Speed, Accuracy and consistency at which message is to be passed to the trader in order to maximize the benefits.*

*Bourse India provides experts Recommendations for Stock Cash, Stock Futures, Stock Option and traded in both NSE and BSE. Our Expertise also lies in Trading in all form of Commodities (MCX & NCDEX) and FOREX Segments.*

#### **EQUITY DERIVATIVE - STOCK FUTURE**

*Basic Stock Future- Derivatives are specifically and relatively new and advanced financial instruments in the Indian stock market. Besides the fact that it needs more risk management, this product generates the highest number of trades, its being the solemn instrument, in which the financial institutions trade. In this service*

*BourseIndia provides intraday Basic stock futures trading tips to traders. Our research team works extensively in identifying the movement in future market on intraday basis and provides traders with intraday trading recommendations to enable them to earn maximum returns with nominal risk tolerance. The service features of this package follows:*

*Service Features*

- *Intraday tips in Equity Future traded in NSE/BSE*
- *We provide you around 3-4 Intraday Future Market call*
- *Recommended Investment of up to Rs >=50 ,000 as margin money*
- *Updates on important news & information*

*Live market tips-Via SMS, Yahoo Messenger.*

*Sample Call-Basic Future: BUY PNB IN NSE FUTURE ABOVE 740 TGT 744, 750 SL 736*

*Updates- Basic Future: BUY PNB IN NSE FUTURE DID OUR FIRST TGT OF 744. BOOK PARTIAL PROFIT*

21. The said website also mentions the pricing details for availing of services in respect of various segments like Equity, Equity Derivative, Index Derivative, Commodity, Currency Derivative etc., and these packages ranged from INR 6,500/- to INR 1,75,000/-.
22. The website further provides for mechanism to make payment in the bank account no. 091XXXXX0399, held with ICICI Bank or the bank account no. 33XXXXXX2040, held with the State Bank of India. The website also provided option to make payments via payment gateway EBS. Accordingly, information was sought by SEBI from ICICI Bank, State Bank of India and EBS.
23. EBS vide email dated July 03, 2020, submitted the merchant application form, KYC, transaction statement and other details pertaining to the Noticee 1. The aforesaid documents furnished by EBS revealed certain details regarding the Merchant account held with it, as provided at Table 1 above.

24. ICICI Bank vide its email dated July 15, 2020 furnished the copy of KYC, Account Opening Forms (AOF) and account statements of bank account no. 091XXXXX0399. The aforesaid documents furnished by ICICI Bank revealed the following information:

**Account details for A/c No. – 091XXXXX0399**

**Table 4**

Particulars	Details
A/c Name	M/s Bourse India Investment Advisor
A/c Type	Current Account
PAN	AANFB7695P
Constitution	Partnership
Communication address	EB-303, Scheme no. 94, Infront of Bombay Hospital, Indore - 452001, Madhya Pradesh.
Mobile no.	94XXXX5770
Email id	shenkey06@gmail.com
Date of Incorporation	16/04/2014
Authorized Signatory	Shenkey Chaurasia (Partner)
Type of Industry	Consultancy in Shares & Commodity Market
Nature of Business	Services
Ownership details	<p>1) Shenkey Chaurasia (Partner) PAN: ATJPC5720H Residential Address: 273, Hirdenagar (Part-1), Gram-Hiradenagar, Tehsil-Mandal, Madhya Pradesh-481661</p> <p>2) Aakash Joshi (Partner) PAN: AINPJ4355Q Residential Address: Ghar no.261-A, Trimurti Nagar, Subhas Chandra Bose Statue, Dhar, Madhya Pradesh-454001</p> <p>3) Hariom Sharan Patel (Partner) PAN: BFLPP9443M Residential Address: Village- Malaigawan, PO-Pateha, Rewa, Madhya Pradesh-486001</p> <p>4) Gaurav Kumar (Partner) Passport No.: K8868419</p>

Particulars	Details
	Residential Address: 1/3495, Ram Nagar Extension, Loni Road, Shahdara, Delhi-110032
Bank statement	Period of statement - 10/05/2014 to 12/01/2016 Credits received during the period – INR 83,94,221.70/- Account closure date - 12/01/2016

25. The documents furnished by State Bank of India with respect to the bank account no. **33XXXXX2040** revealed the following details:

**Table 5**

Particulars	Details
A/c Name	M/s Bourse India Investment Advisor
A/c Type	Current Account
PAN	AANFB7695P
Constitution	Partnership
Communication address	Shop No. - 15, EB-303, Scheme no. 94, In front of Bombay Hospital, Indore - 452001, Madhya Pradesh.
Mobile no.	94XXXX5770
Email id	shenkey06@gmail.com
Date of Incorporation	16/04/2014
Mode of operation	Any one
Nature of Business	Stock Market Advisor
Authorized Signatory	Hariom Sharan Patel and Aakash Joshi (any one)
Ownership details	<p>1) Shenkey Chaurasia (Partner) PAN: ATJPC5720H Residential Address: 273, Hirdenagar (Part-1), Gram-Hiradenagar, Tehsil-Mandal, Madhya Pradesh-481661</p> <p>2) Aakash Joshi (Partner) PAN: AINPJ4355Q Residential Address: Ghar no.261-A, Trimurti Nagar, Subhas Chandra Bose Statue, Dhar, Madhya Pradesh-454001</p> <p>3) Hariom Sharan Patel (Partner) PAN: BFLPP9443M Residential Address: Village- Malaigawan, PO-Pateha, Rewa, Madhya Pradesh-486001</p> <p>4) Gaurav Kumar (Partner)</p>

Particulars	Details
	PAN: CSTPK6551R Residential Address: 1/3495, Ram Nagar Extension, Loni Road, Shahdara, Delhi-110032
Bank statement	Period of statement - 15/07/2014 to 02/12/2015 Credits received during the period - INR 22,85,265/- Account closure date - 02/12/2015

26. The examination of SEBI also revealed that Hariom Sharan Patel, Proprietor of BIS Capital is registered with SEBI from August 18, 2015.

27. As per the “Whois” report retrieved from website-DomainBigdata.com, it was observed that the website creation date for the websites of Bourse India & BIS Capital are as follows:

**Table 6**

Entity Name	Website URL*	Creation date
Bourse India	<a href="http://www.bourseindia.com">www.bourseindia.com</a>	March 09, 2014
BIS Capital	<a href="http://www.biscapital.com">www.biscapital.com</a>	May 15, 2015

*\*Both the websites are currently inactive*

28. From the disclosures made on the website [www.bourseindia.com](http://www.bourseindia.com), bank account details and the account statements, documents furnished by EBS payment gateway, the above stated factual details, the following was observed:

- Noticees were involved in providing investment advisory services through its website [www.bourseindia.com](http://www.bourseindia.com).
- Noticee 1 is a partnership concern with 4 partners- i.e, Noticee 2, Noticee 3, Noticee 4 and Noticee 5.
- The total credits received in the bank accounts of Noticee 1, as per the bank statements received from ICICI & SBI, are tabulated below-

**Table 7**

<u>S. No.</u>	<u>A/c Name</u>	<u>A/c Number</u>	<u>Period of statement</u>	<u>Credits received</u> (in INR)	<u>A/c closure date</u>
<u>1.</u>	M/s Bourse India Investment Advisor	091XXXXX0399 (ICICI Bank)	10/05/2014 to 12/01/2016	83,94,221.70/-	12/01/2016
<u>2.</u>	M/s Bourse India Investment Advisor	33XXXXXX2040 (State Bank of India.)	15/07/2014 to 02/12/2015	22,85,265/-	02/12/2015
<b>Total</b>				1,06,79,486.70/-	

It can be seen from the above table that the Noticees have mobilized INR 1,06,79,486/- in both the accounts.

29. From the archive copies of website of the Noticees, I find that that the Noticees held themselves to be an investment adviser via Noticee 1. The Noticees engaged in the business of providing investment advisory services. I find, from fees being charged by the Noticees for availing of services in respect of various segments like Equity, Equity Derivative, Index Derivative, Commodity, Currency Derivative etc., that the Noticees were engaged in providing advice related to investing in, purchasing, selling or dealing in securities. Further, I note from the replies of Noticee 3, Noticee 4 and Noticee 5 that admittedly they were carrying out unregistered investment advisory services as a partner of Bourse India Investment Advisor from May 10, 2014 to August 16, 2015. I find that they have admittedly provided investment advice within the meaning of the IA Regulations.

30. From the information submitted by EBS Payment Gateway with respect to www.bourseindia.com, it is clear that the name of the contact person for the website and the Noticee 4 are the same, and the website has been created for selling equity, equity derivatives etc. Further, I note that after obtaining SEBI registration with effect from August 18, 2015, the Noticee 4 entered into the amendatory agreement dated September 10, 2015, with EBS Payment Gateway wherein the name of the company was changed from Bourse India Investment Advisor to BIS Capital Investment Advisor. The said agreement also records

change in bank account held with ICICI Bank Ltd. from account no. ending with 0399 to 0424.

31. I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of the SEBI Act and Regulations framed thereunder. Section 12(1) of SEBI Act 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.”*

32. As per Regulation 3(1) of IA Regulations, 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”*.

33. 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, 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.

34. The IA Regulations provide for the minimum professional qualification and prescribe 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.



35. In their respective replies Noticee 3, Noticee 4 and Noticee 5 have contended that they did not have knowledge that a registration certificate is required from SEBI to provide investment advisory services. It is a cardinal principle of law that ignorance of the law is not an excuse and the same cannot be taken as a defense in any proceedings to avoid liability in case of any violation. The IA Regulations were notified by SEBI in the year 2013 and it came into force with effect from April 21, 2013. From such date, it was imperative for any person carrying out investment advisory activity to get registered with SEBI. It is noted from the records that the website [www.bourseindia.com](http://www.bourseindia.com) was created on March 09, 2014 i.e, nearly 1 year after the IA Regulations came into effect. It is implausible that Noticees were not aware of the requirements of IA Regulations prior to creating this website, and if they were actually not aware, then it points to lack of due diligence on their part and such laxity is not expected from an Investment Adviser. In view of the above, I do not find any merit in this contention.
36. It is noted that the Noticees were not registered with SEBI in the capacity of Investment Adviser and Noticee 4 got registered as an Investment adviser, much later on August 18, 2015. Thus, I conclude that Noticees were providing investment advisory services under the name of Bourse India Investment Advisor prior to obtaining registration from SEBI.
37. From the above discussions, I find that the Noticees by acting as an investment adviser and holding themselves out as Investment Adviser within the meaning of the IA Regulations and without obtaining certificate of registration from SEBI has admittedly violated Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations.
38. I note that the Noticees received a total credit of Rs. 1,06,79,486 /- in the accounts detailed at Table 7 above . The SCN, inter-alia, alleged that the amounts credited in the bank accounts of Noticees were received as fees towards the services rendered as an investment adviser. The Noticees were called upon to show cause as to (i) why suitable directions, including refund of fees of Rs.

1,06,79,486/-, taken towards investment advisory activity, should not be issued against the Noticees. The Noticee 3, Noticee 4 and Noticee 5 vide their identical replies dated March 21, 2023 contended the following with respect to total amount received towards fees for Investment advisory services:-

- i. Bourse India returned the service amount to certain Clients to the tune of Rs. 6, 41, 601.
- ii. The account of Bourse India was continued to be used for receiving remuneration for the services rendered by BIS Capital Investment Advisor.
- iii. Certain deposits to the tune of Rs. 4,20,000 made by the Noticees in the account of Bourse India are also being treated as fee received by Bourse India for providing its services.

39. However, the Noticees failed to submit any credible evidence/records to substantiate their claims. In this regard, I note that the Noticees have not submitted any comprehensive documentary records to establish the clientele, and consequent refund of the same. Further, the details submitted towards remuneration for the services rendered by BIS Capital Investment Advisor, is unclear and also pertains to a period when Investment Advisor license was not granted to the Noticee 4/BIS Capital Services. This calls for a complete audit trail. Further, I note that, the claim of the Noticees that the Noticees deposited certain amounts in the account of Bourse India for its day to day operations also needs to be independently verified. Thus, on a totality of the submissions made by the Noticees, I note the present documents submitted by the notice, *per se*, are inconclusive to arrive at any meaningful conclusion that the Noticees had indeed refunded the fees received from the clients, and also for due adjustments for certain credits as claimed and detailed above, thus warranting a direction.

**B. Whether the alleged fraudulent activities / conduct / act / practice of the Noticees, as mentioned above, is in violation of provisions of Section 12A(a), (b) and (c) of SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(k) of PFUTP Regulations?**

40. It was alleged that the misleading representations by the Noticees are deceptive and fraudulent in nature and are well covered within the definition of “fraud” defined under Regulation 2(1)(c) of the PFUTP Regulations. It was alleged that, the Noticees despite having no registration from SEBI in any capacity had portrayed themselves as an Investment Adviser.
41. *The Noticees submitted that, the Noticee 2 to Noticee 5 had carried out the alleged Investment Advisory Service through Bourse India only between 10.05.2014 to 16.08.2015. The Noticees contended that, providing Investment Advisory was never considered to be falling within the scope of the definition of “dealing in securities” as defined at Regulation 2 (1) (b) and consequently would not fall within the scope of “fraud” as defined in Regulation 2 (1) (c). The said understanding flows from 2018 Amendments to the PFUTP Regulations that the addition of Regulation 2 (1) (b) (ii) thereby introducing the words “acts which may be knowingly designed to influence the decisions of investors ” were done specifically to bring Investment advisory services within the scope of the definition of dealing with securities and consequently bringing the same within the definition of fraud.*
42. As per the definition of “fraud” as provided in regulation 2(1)(c) of PFUTP Regulations, 2003 “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 by a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment and by an active concealment of a fact by a person having knowledge or belief of the fact.
43. With respect to the aforesaid contention of the Noticees, it is important to look at the definition of “dealing in securities” under the PFUTP Regulations prior to its substitution (i.e, before February 01, 2019). The earlier definition read as follows:

*“dealing in securities” includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act.”*

44. The definition above contains the word “includes” which prima facie indicates that the definition is inclusive and is broad. In this regard, reference is drawn to the Report submitted by the ‘Committee on Fair Market Conduct’ dated August 08, 2018 which has recommended the amendment to the PFUTP Regulations, wherein at para 3 of page 22 it is stated that:

*“The courts have recognized that as a matter of principle, while interpreting the PFUTP Regulations, the court must weigh against an interpretation which will protect unjust claims over just, fraud over legality and expediency over principle (SEBI v Kanaiyalal Baldevbhai Patel 2017 15 SCC 1). That being said, the Committee was of the opinion that it would be beneficial to have the PFUTP Regulations further strengthened to specifically enable SEBI to have the power to restrict such ‘dealings in securities’ instead of having to rely on interpretation of the PFUTP Regulations to protect the market. It was noted that in the SEBI Act and PFUTP Regulations, fraud, manipulative and unfair trade practices are referred to in the context of dealing in securities. The Committee considered whether the definition of ‘dealing in securities’ under regulation 2(1)(b) of the PFUTP Regulations is adequate in the context of SEBI’s regulatory experience as well as observations of the Supreme Court. It was noted that while the definition of ‘dealing in securities’ is reasonably broad, fraudulent, manipulative or unfair trades may also be carried out with the aid and assistance of persons other than the parties who are transacting in the securities market.*

45. Further, under the head “Recommendation” at Page 22 and 23 the report states that:

*“Given the increasingly complicated nature of transactions in the securities market as has been demonstrated by recent experiences and the indirect role of various persons in such manipulative transactions, the Committee is of the opinion that the*

*definition of “dealing in securities” under Regulation 2(1)(b) of the PFUTP Regulations must also be widened to include within its ambit persons providing assistance in such dealing in securities. The Committee noted that while SEBI has been charging various persons for aiding and abetting prohibited transactions, it would be appropriate that the definition should specifically cover such persons who are indirectly participating and indeed often orchestrating and controlling such prohibited transactions.”*

46. Based on the above discussions in the report and recommendations given thereon it is amply clear that, PFUTP Regulations as existing prior to the amendments were sufficiently broad however were subject to interpretation. Based on the facts and circumstances of a cases, the provisions may be interpreted to cover charging of various person(s) who were aiding prohibited acts. Thus, from the above, it can be concluded that SEBI was already taking necessary actions for protection of investors and market with respect to entities not covered by the earlier definition of “dealing in securities”. However, on the recommendation of the Committee, it was deemed appropriate to explicitly include certain acts in the definition of “dealing in securities”, and hence, the definition was accordingly substituted. The substitution was merely a clarification of the law.

47. I note that, in the instant proceedings, the role of Noticees as investment advisors, who are offering their services to gullible investors for trading in securities, squarely falls within the scope of the definition of “dealing in securities” as defined at Regulation 2 (1) (b) and consequently would fall within the scope of “fraud” as defined at Regulation 2 (1) (c) under the erstwhile provisions, and shall not require the aid of the amended provisions.

48. It is noted from the archived copy of the website ([www.bourseindia.com](http://www.bourseindia.com)), the Noticees, *inter-alia*, claimed on the website that:

- i. *Bourse India is a Stock Advisory Company in Indore- Bourse India Financial Services is newly incorporated Indian Trading Analysis Providing Company.*

- ii. *we believe in integrity which gives us a notion and Enthusiasm to conduct our business by providing high return to our investors.*
- iii. *As a company we have been providing services for long-time for longtime.*
- iv. *We Follow “Know your Client” Principle. Along with Analysis we believe that we need to synchronize the Dreams of Our Clients with their Financial Situation by presenting the optimized Investment Services*
- v. *We understand very well about the complexities a trader faces right from receiving the expert advice till the execution of the trade. We very well understand the importance of Speed, Accuracy and consistency at which message is to be passed to the trader in order to maximize the benefits.*
- vi. *Bourse India provides experts Recommendations for Stock Cash, Stock Futures, Stock Option and traded in both NSE and BSE. Our Expertise also lies in Trading in all form of Commodities (MCX & NCDEX) and FOREX Segments.*
- vii. *Our research team works extensively in identifying the movement in future market on intraday basis and provides traders with intraday trading recommendations to enable them to earn maximum returns with nominal risk tolerance.*
- viii. *The said website also mentioned the pricing details for availing services in respect of various segments like Equity, Equity Derivative, Index Derivative, Commodity, Currency Derivative etc., and these packages ranged from INR 6,500/- to INR 1,75,000/-.*

49. In my view, the Noticees falsely claimed themselves to be a investment adviser without SEBI registration, to induce gullible investors. Among other false claims, Noticees also claimed that, they ‘provide high return to investors’, ‘Maximise the benefits’, ‘enable them to earn maximum returns with nominal risk tolerance’ etc. As investment advisory services, are only to be provided by registered investment advisors, by such false claims the Noticees represented to the world at large, that its eligibility has been tested on suitable parameters. The Noticees have unflinchingly claimed on the website to the world at large that they are Investment Advisor with vast experience. Such false claims were made to win investor

confidence and to attract maximum number of clients. However, the fact is that they were not registered with SEBI in any capacity.

50. It is noted that, the Noticees claimed to provide, high return on client's investment and maximize benefits/returns etc., which is an active concealment of the material fact that every investment in the market is subject to market risk. This act of conveying high/maximum returns or certainty of profit, is nothing but indulging in for the purposes of luring customers in its net and thereby increasing its income. In light of the same, the act of the Noticees to actively conceal material information, is a non-genuine and a deceptive act and has been made with an intent to influence the clients to avail of its advisory services and deal in securities.
51. Further, it is noted from the screenshot of the website [www.bourseindia.com](http://www.bourseindia.com), submitted by the Complainant that, the website displays the name "Bourse India" and has the domain name registered of Bourse India Investment Advisor, however, the IA registration no. displayed is the one that was granted to the Noticee 4 by SEBI with effect from August 18, 2015 (i.e, INA000003346).
52. I note that displaying the IA registration no. granted to the Noticee 4 (Proprietor of BIS Capital Investment Advisor), on the website of Bourse India Investment Advisor amounts to misrepresentation that Bourse India Investment Advisor was registered as an IA, when in fact, it was not. It seems that the above was a ploy to induce investors to deal in securities by availing unregistered investment advisory services offered by Bourse India Investment Advisor. It is reasonable to conclude that investors may carry a bona fide belief that any entity which on their website portrays itself as an expert in providing stock market recommendations and has a IA registration no. from SEBI would be actually registered in terms of IA Regulations, however, the same was not the case with respect to Bourse India Investment Advisor.
53. Thus, as discussed in the forgoing paragraphs, the misleading representations by the Noticees are deceptive and fraudulent in nature and are well covered

within the definition of “fraud” defined under Regulation 2(1)(c) of the SEBI PFUTP Regulations. I am of the considered view that by disseminating misleading information through its website, the Noticees have knowingly misled the investors at large thereby engaging in acts, practices, course of businesses which operated as ‘fraud’ as defined under Regulation 2(1)(c) of the PFUTP Regulations.

54. It is pertinent to refer to the observations of the Hon’ble Supreme Court in the case of **SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1**, which are as under-

*“The definition of ‘fraud’, which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a ‘fraudulent act’ or a conduct amounting to ‘fraud’. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word “induce”.....to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient.”*

55. Further, in the case of **SEBI Vs. Kishore Ajmera (2016) 6 SCC 368**, the Hon’ble Supreme Court observed that,

*“the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors’ confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the*



*investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide enactment is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light”.*

56. The above said acts of fraudulent misrepresentation and unauthorized advisory services on the part of the Noticees are clearly an expression of falsehood and concealment of reality, with the sole aim to induce the gullible investors to deal in securities. I would have no hesitation to hold here that such an act on the part of the Noticees to portray itself as a investment adviser so as to further its illegal activities of providing investment tips without holding a bonafide registration from SEBI, has certainly caused strong inducement to the gullible investors, who would never have paid him their hard-earned money as fees, had the said misrepresentation not been made by the Noticees to them through its website or otherwise. In this regard, the observation recorded by the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Kanaiyalal Baldevbhai Patel [(2017) 15 SCC 1]** is worth quoting: “...A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did...”. Thus, applying the aforesaid test in the present case, the investors would not have fallen trap to the aforesaid unauthorised investment advisory services indulged in by the Noticees, had the Noticees not made such false claims before them without having a proper and valid registration from SEBI. Therefore, I am constrained to observe that the above acts of the Noticees of resorting to misrepresentation and spreading falsehood about its status as an investment adviser, promise of high returns and maximum benefits etc. and deliberate concealment of facts are

fraudulent in nature, having the potential to fraudulently induce the investors to deal in securities by availing of the services of the Noticees.

57. Further, the Noticees have contended that, the allegations in question are prior to the amendment of Regulation 4 (2) (k) which only prohibits making of advertisement, which may influence the decision of the investors, and, the same would not bring within its fold the Investment Advisory services as offered by the Noticees.

58. I note that, on the recommendation of the Committee, it was deemed appropriate to explicitly expand Regulation 4 (2) (k) given the use of technology and social media as mode of communication and information dissemination. In this regard, it is further noted that, the publication on the website of the Noticees i.e, [www.bourseindia.com](http://www.bourseindia.com) clearly qualifies as advertisements. In this regard, I would like to draw support from the definition of the term "**advertisement**" as has been defined in Wharton's Law Lexicon, which reads as: "... a public notice or announcement of a thing." In view of the above, the present dissemination of information on the website of the Noticees squarely fits in the definition of "advertisement" and resultantly falls within Regulation 4(2)(k) as existed under the erstwhile provisions, and shall not require the aid of the amended provisions.

59. As concluded above, the Noticees by disseminating false and misleading information on its website showing the firm as an investment advisor with long experience and claims of high returns and maximum benefits etc., and displaying on its website the SEBI Registration No. which was not granted to them, has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and Regulation 4(2)(k) of the PFUTP Regulations.

60. I note that the SCN has inter-alia called upon the Noticees to show cause as to why appropriate penalty should not be imposed upon it under Section 15HA and

15HB of SEBI Act for the violations alleged in the SCN. Section 15HA and 15HB of the SEBI Act are extracted hereunder: -

***“Penalty for fraudulent and unfair trade practices.***

***15HA.*** *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].”*

***“Penalty for contravention where no separate penalty has been provided.***

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

61. In view of the above, I find that the Noticees acted in violation of Section 12(1) of the SEBI Act read with Regulation 3(1) of the IA Regulations and Section 12A(a), (b) and (c) of SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(k) of PFUTP Regulations. Thus, I find that the Noticees are liable to be imposed with penalty under both Sections 15HA and 15HB of the SEBI Act.

62. 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.”*

63. The activities of the Noticees, as brought out above, seen in the backdrop of the aforesaid provisions of law show that they were acting as investment adviser and holding themselves out as an investment adviser, without holding the certificate of registration as investment adviser. I find that the Noticees have violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations. Further, Noticees by disseminating false and misleading information on their website showing the firm as Investment adviser with long experience and claims of high returns and maximum benefits etc. have violated the provisions of Sections 12A (a), (b) and (c) of the SEBI Act read with Regulation 3(a), 3(b), 3(c), 3(d), 4(1) Regulation 4(2)(k) of the PFUTP Regulations.

64. As observed above, I note that the Noticees received total a credit for a sum of Rs. 1,06,79,486 /- in the bank accounts as advisory fees, being the proceeds of an illegal activity and are liable to be refunded to the respective clients subject to the discussions as contained in paragraph 38 & 39 hereinabove.

## **DIRECTIONS**

65. 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 Noticees shall refund a sum of Rs. 1,06,79,486 (Rupees One Crore Six Lakh Seventy Nine Thousand Four Hundred Eighty Six Only) subject to verification and due certification of the claims made by the Noticees by an independent Chartered Accountant as discussed in paragraph 39 above and further as detailed at para 65(h) below. The Noticees shall proceed to refund to its clients as detailed hereinafter:

- (b) The Noticees 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 Noticees shall accept refund claims/requests for a period of 3 months from the date of public notice, as directed under para 65(b) above;
- (d) The Noticees shall within a period of four months from the date of public notice, as directed under para 65(b) above, carry out and complete the refund exercise;
- (e) Upon expiry of four months from the date of public notice, any balance amount which remains with the Noticees, due to its inability to contact the client or otherwise, as directed in para 65(d) above, shall be deposited in a dedicated escrow account, to be opened and maintained by the Noticees for a period of one year and utilized only for the purpose of refund to clients. Thereafter, the amount lying in the said escrow account shall be transferred to the Investors Protection and Education Fund maintained by SEBI;
- (f) The repayments to the claimants or clients shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- (g) The Noticees are hereby 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 Noticees, only for the purpose of making refunds to the clients who were availing of the investment advisory services from the Noticees;
- (h) After completing the aforesaid repayments, the Noticees 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 65(g) above shall cease to operate upon filing of such report. In case of disbursement of any amount from the said escrow account, the Noticees shall also file a report of such disbursement with SEBI, within a period of 15 days, after expiry of one year, as directed in para 65(e) above, duly certified by an independent Chartered Accountant;

- (i) The Noticees are restrained 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 65(h) above, whichever is later;
- (j) The Noticees are also restrained from associating itself as a director or key managerial personnel with any listed public company or any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period of two years from the date of this order;
- (k) The Noticees shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 65(i) 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;
- (l) The Noticees (Jointly and Severally) are 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 15HB of the SEBI Act;
- (m) The Noticees 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](http://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 Noticees may contact the support at portalhelp@sebi.gov.in.

66. In case of failure of the Noticees to comply with the aforesaid directions in para 65(a) and 65(m), SEBI, on the expiry of the stipulated time period therein, may recover such amounts, from the Noticees, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws;

67. The direction for refund, as given in Para 65(a) above, shall not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

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

69. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds.

**Date: August 25, 2023**

**K SARAVANAN**

**Place: Mumbai**

**CHIEF GENERAL MANAGER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**