

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 Noticees	PAN
1.	M/s A S Traders (Proprietor – Mr. Vicky Alam)	CMKPA6523N
2.	Mr. Durgesh Kumar	JDFPK3804P

In the matter of unregistered Investment Advisory by M/s A S Traders by Mr. Vicky Alam and Mr. Durgesh Kumar.

*(The above entities are individually referred to by their corresponding names / numbers and collectively referred to as “**Noticees**”)*

BACKGROUND

1. Securities and Exchange Board of India (“hereinafter referred to as **SEBI**”) conducted an examination into the affairs of M/s A S Traders (Proprietor – Vicky Alam) (hereinafter referred to as “**Noticee No.1**”) and Mr. Durgesh Kumar (hereinafter referred to “**Noticee No.2**”) on the complaint of fraudulently collecting money in the pretext of fake commitments of unrealistic /guaranteed returns investing in share market for the examination period from ...to... wherein the Noticees were *prima facie* found to be carrying out unregistered investment advisory activities which is in violation of provisions of Securities and Exchange Board of India,1992 (“hereinafter referred to as **SEBI Act**”), Prohibition of

Fraudulent and Unfair Trade Practices Regulations, 2023 (“hereinafter referred to as **PFUTP Regulations**”), Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 (“hereinafter referred to as **IA Regulations**”) and any other Rules and Regulations made thereunder.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

2. On the basis of findings of the examination, SEBI issued Show Cause Notice dated July 17, 2023 (“**SCN**”) to the Noticees which, *inter-alia*, alleged the following:
 - a. SEBI was in receipt of complaint alleging that Top Researcher Panel (another name / brand name of A S Traders) is a fraud company and collected money of Rs.4,80,000/- in 3 installments in the pretext of fake commitments of unrealistic/guaranteed returns by investing in share market and further the Noticees asked the complainant to pay an amount of Rs.2,40,000/- additionally to receive Rs.45,00,000/- as a profit. When the complainant refused to pay additional amount and asked to return money it was refused to pay back the money to the complainant.
 - b. The complainant provided the documents as evidence in support of his complaint such as the copies of email received from Top Researcher Panel sending the details of plans provided, screenshots of payments, screenshots of WhatsApp chats, company website URL, contact details/bank account details etc.,
 - c. The website with the domain name <http://topresearcherpanel.com/> was browsed/perused for information, and it was observed that the same was not active during the examination period.
 - d. Top Researcher Panel shared all the details of plans through its emails and some of the screenshots of the plans shared by email *inter alia*, disclosed the following.

E-mail on Growth Investment Plan

“Here the mail is to inform you the Growth Investment Plan. This Plan helps you to growth your overall investments and a guaranteed return will provided by us.We

work with various kinds of strategies to delight the customers by providing continues support in the market. Our recommendations are highly accurate and gives consistence profit in the market. As discussed, here we are sending you the offer details for the plan which was informed by our market expert,

Service Name : GROWTH INVESTMENT PLAN Service

Amount : 4,50,000 Rs.+ 18% tax

Service Tenure : 90 Days

Return : 22.50L

Investment Required : 1.20L

Subscription : 20% (90,000 Rs.)

Note: 1.) If you will subscribe on the same day of registration you will get 15 days extra service free as per discussed with your profile manager.

Amount will pay in given bank account

HDFC BANK

50200054696800

HDFC0002610

DURGESH KUMAR

CURRENT ACCOUNT”

E-mail on Power Investment Plan:

“Here the mail is to inform you the Power Investment Plan. This Plan helps you to growth your overall investments and a guaranteed return will provided by us. We work with various kinds of strategies to delight the customers by providing continues support in the market. Our recommendation are highly accurate and gives consistence profit in the market. As discussed, here we are sending you the offer details for the plan which was informed by our market expert,

Service Name : POWER INVESTMENT PLAN

Investment Amount : 7,50,000 Rs.

Initial Investment Required : 3,75,000 Rs.

Service Tenure : 25- 30 Days

Return : 37 Lakh Guaranteed Return + 7.50 Lakh (Investment Amount)

No of Payout : 3

Note : 1.remaining investment amount (3.75L) you have to transfer after first payout.

2.) You will get minimum 19L in second payout

Amount will be pay in given bank account

A.S TRADERS

10067184871

IDFB0060344

CURRENT A/C

IDFC FIRST BANK”

- e. Top Researcher Panel offered that in case the client subscribes on the same day of registration, he will get 15 days extra service free. This implied that Top Researcher Panel was charging a fee to the clients for its service.
- f. The pricing details and bank account details for making payment were mentioned for these packages in the email of top Researcher Panel. The details of the bank accounts mentioned in the aforementioned plans shared through the aforesaid email are tabulated below:

Table: 1

Sl. No.	Bank	Account Name	Account No.	IFSC Code
1.	IDFC First Bank	A S Traders	10067184871	IDFB0060344
2.	HDFC bank	Durgesh Kumar	50200054696800	HDFC0002610

- g. Bank account statement, Account Opening Form (AOF) and KYC were sought from various banks. From the analysis of KYC, Account Opening Form and bank account statement provided by IDFC First Bank, HDFC Bank and ICICI Bank, it is noted as under:

Table: 2

Sr. No	Bank Name & A/C No	Account Name	Name of Proprietor	Date of Account Opening	Date of last transaction	Account Status	Amount credited in the A/c in Rs.
1.	IDFC First Bank A/c No.- 10067184871	A S Traders	Vicky Alam	15/02/2021	05/06/2021	-	1,22,62,677
2.	HDFC Bank A/C No 502000054696 800	Durgesh Kumar	-	03/03/2021	22/01/2022	-	62,35,705
3.	ICICI Bank A/c No.- 735305500085	A S Traders	Vicky Alam	29/05/2021	29/07/2021	-	25,52,016
	Total						2,10,50,398

- h. The details of observations made from the above table are stated below:
- It appeared from IDFC First Bank and ICICI Bank that these account belonged to M/s A S Traders for which Mr. Vicky Alam was proprietor.
 - The copy of account opening form of IDFC First Bank showed that the line of business of A S Traders was Retail Business in Textiles/Garments.
 - It appeared from HDFC Bank Account that the bank account belonged to Mr. Durgesh Kumar and it was observed that the amount of Rs.62,35,705/- which was credited to HDFC Bank Account was towards investment advisory services.
 - It appeared that all credit entries after opening of bank accounts in the IDFC First Bank, HDFC Bank and ICICI Bank account was pertaining to unregistered investment advisory.
 - It was further noted from the bank account statements that several credit entries were made in the accounts with description as 'trading', 'stock

market', 'investment', 'fees', 'brokerage', 'trading', 'fee regarding share call', 'share broker payment', share market tips', 'share market registration', 'share call', 'months plan', 'share market tips', 'intraday', etc, which appeared to be in the nature of fees collected for investment advisory activities.

- i. The Noticees did fraud with the complainant and the complainant had deposited Rs.4,02,000/- and Rs.80,000/- in the IDFC First and HDFC Bank accounts of the Noticee as fee. From the analysis of account statements of IDFC First Bank and HDFC Bank account, it was confirmed that the said amount was credited in IDFC First Bank and HDFC Bank account of Noticees. Further, Noticees had a website <http://topresearcherpanel.com/> which is inactive. The Noticees through emails shared the details of various plans. The Noticees also claimed that they employ various strategies in the share market, and their recommendations are highly accurate, thereby knowingly misrepresented that they are experts in markets. The Noticees even assured guaranteed returns and fraudulently collected monies from investors as the assurance lured the investors and shared the details of fees for account handling services along with profit details, capital required and validity of the plan. This implied that the Noticees were charging a fee to the clients for their services.
 - j. From the above, *prima facie*, it appeared that A S Traders, its proprietor Mr. Vicky Alam and Mr. Durgesh Kumar, who were using the name of Top Researcher Panel, were involved in unregistered investment advisory activities without obtaining registration from SEBI.
3. Based on the facts stated in the said SCN, it was alleged that the Noticees were engaged in the activities of an investment adviser without obtaining the requisite registration from SEBI, as required in terms of Section 12(1) of the SEBI Act read with Regulation 3(1) of IA Regulations.

4. Further, it was observed and alleged that the Noticees had fraudulently represented that it provides account handling services, and manage capital by trading in markets. The Noticees assured guaranteed returns and evidently, knowingly concealed the fact that they were not registered with SEBI as an investment adviser, and had also misrepresented about their expertise in investment advisory thereby luring and inducing investors to deal in the markets by availing their services with the objective of enhancing their income. The conduct of the Noticees through the aforementioned activities was alleged to be 'fraud' in terms of the Regulation 2(1)(c) of PFUTP Regulations, 2003.
5. In view of the above, it was alleged that the Noticees have violated Regulations 3(b), (c), (d), 4(1), 4(2) (k), 4(2)(s) of SEBI PFUTP Regulations, 2003 read with Section 12 A (a), (b) and (c) of the SEBI Act, 1992.
6. Therefore, the Noticees were called upon to show cause as to (i) why suitable directions under Sections 11(1), 11(4) and 11B (1) of the SEBI Act, 1992 including direction of refund of fees/monies collected from the investors should not be issued against the Noticees and (ii) why inquiry should not be held against the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon them under Section 11 (4A), 11B (2) read with Section 15EB and 15HA of the SEBI Act, 1992, for the aforesaid violations.
7. SCN dated July 17, 2023 was sent to the Noticees through SPAD at the addresses of the Noticees, which were obtained from KYC details submitted by the Noticees to the Banks, however the same returned undelivered with the remarks "*Addressee cannot be located*". Subsequently, the SCN was served to the Noticees vide a newspaper publication dated December 02, 2023 in an English and Hindi daily (Patna and Ranchi Edition). In the interest of natural justice, through aforesaid publication, Noticees were also granted an opportunity of personal hearing on December 19, 2023. However, the Noticees failed to

appear for the personal hearing and did not submit any reply to the SCN as was the case in all the previous proceedings.

8. I note that sufficient opportunities of filing reply to the SCN and hearing have been given to the Noticees, however, the Noticees have failed to reply or to appear in hearings. Accordingly, the matter is proceeded ex-parte on the basis of the documents and information available on record.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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

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

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

SEBI Act

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

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

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

"No person shall directly or indirectly-

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

IA Regulations

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

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

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

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

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

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

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

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

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

Section 3 - Prohibition of certain dealings in securities

"No person shall directly or indirectly-

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

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

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.*
- (2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: -*
 - (k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;*
 - (s) mis-selling of securities or services relating to securities market;"*

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

12. 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.

13. From the facts mentioned in the SCN such as shared details of various plans through emails to the complainant including the details of fees for account handling services along with profit details, capital required and validity of the plan and also sharing the bank account details for collecting the fees for service rendering as well as the narration of the bank statement i.e. 'trading', 'stock market', 'investment', 'fees', 'brokerage', 'trading', 'fee regarding share call', 'share broker payment', share market tips', 'share market registration', 'share call', 'months plan', 'share market tips', 'intraday' clearly indicates that the Noticees were engaged in investment advisory service relating to investing in, purchasing, selling or otherwise dealing in securities or investment products,

through their website, <http://topresearcherpanel.com> in lieu of consideration. I note that, if an entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client in lieu of consideration, including entities which are holding themselves out as investment advisers, will be covered by the definition of 'Investment Adviser' as given in Regulation 2(1)(m) of the IA Regulations, 2013. I find that in terms of Regulation 2(1)(l) of IA Regulations, 2013, the Noticees were doing Investment advisory services through their website. As noted above, the Noticees received Rs.4,02,000/- and Rs.80,000/- as considerations from the complainant in IDFC First Bank and HDFC Bank accounts respectively for the investment advisory services provided by them. Hence, I find that these services were being offered by the Noticees in lieu of the consideration, as noted above. Therefore, I find that the Noticees were engaged in the business of providing investment advice to their clients, for consideration, and thus, acting as an investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013. From the discussion above, I further find that the Noticees were holding themselves out to be Investment Advisers as given in Regulation 2(1)(m) of the IA Regulations, 2013.

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

15. I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, 2013, the registration of the investment advisers is mandatory. It provides that, *"On and from the commencement of these*

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

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

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

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

- i. An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 along with requisite nonrefundable application fee;
- ii. The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:
 - a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognized

foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

- b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
 - c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.
- iii. Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

18. Further, the IA Regulations provides for the minimum professional qualification and prescribes mandatory net-worth requirement. Further, it inter-alia provides for disclosures of any conflict of interest, risk profiling of clients, maintenance of records related to client assessments and the suitability of advice. The prescriptions in the IA Regulations are intended to safeguard the interest of investors and curb the perpetration of unregistered entities entering the field of investment advisory services and indulging in unscrupulous market practices.

19. It is noted that none of the Noticees were registered with SEBI in the capacity of Investment Adviser during the period under examination. It is further noted that the Noticees received amounts to the tune of Rs.1,22,62,677/-, Rs.62,35,705/- and Rs.25,52,016/- in the bank accounts of IDFC First Bank, HDFC Bank and ICICI Bank respectively totaling to Rs.2,10,50,398/- which are in the nature of Investment Advisory fees.

20. In view of the above, I find that aforesaid total credit of Rs.2,10,50,398/- in the bank accounts of IDFC First Bank, HDFC Bank and ICICI Bank of the Noticees were received by the Noticees as fee for investment advisory services provided by them while acting as an investment adviser without obtaining certificate of registration from SEBI. In view of the above, I find that the Noticees, by acting as investment adviser within the meaning of the IA Regulations and without obtaining certificate of registration from SEBI, have acted in total disregard to the requirements of law and have violated Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act.

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

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

22. The Noticees were called upon to show cause as to 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 penalty be not imposed upon them under Section 11 (4A), 11B (2) read with Section 15EB and 15HA of the SEBI Act, 1992, for the aforesaid violations. The Noticees failed to respond to the SCN.

23. With respect to the allegation of fraud, I note the following:

- a. The Noticees have mentioned “*This Plan helps you to growth your overall investments and a guaranteed return will provided by us*” in description of their plans.
- b. The Noticees have mentioned the return amounts in absolute numbers from the investments made in the plans. In Growth Investment Plan, the potential investors were assured of a guaranteed return of Rs.22,50,000/- on investment of Rs.1,20,000/- in a tenure of 90 days. Similarly, in Power Investment Plan, the investors were assured of a guaranteed return of Rs.37,00,000/- + Rs.7,50,000/- on an initial investment of Rs.7,50,000/- in a tenure of 25-30 days.

24. From the above, it is clear that Noticees promised guaranteed returns to the investors through their plans which intended to invest the investors’ money in share market.

25. I also find that the Noticees have made descriptions regarding returns in a very reckless and careless manner. Further, Noticees, by assuring guaranteed returns by investing in shares, have violated the fundamental canon of the securities market i.e. investments are subject to market risks and therefore, have knowingly misled the investors at large by engaging in acts, practices, course of businesses. which operated as ‘fraud’ as defined under Regulation 2(1)(c) of the PFUTP Regulations.

26. I further note that Regulation 4(2)(k) provides that dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities. Also, Regulation 4(2)(s) of the PFUTP Regulations prohibits mis-selling of securities or services related to securities market. Mis-selling has further been

explained in the said Regulations to mean knowingly making false or misleading statements or not taking reasonable care to ensure suitability of the securities or services to the buyer. Therefore, I note that the Noticees were indeed involved in mis-selling of services to their clients by making false and misleading statements of providing guaranteed returns to the investors.

27. Thus, I note that the Noticees, by assuring guaranteed returns with respect to their investment advisory related plans and by knowingly publishing false and misleading information, defrauded the potential investors by inducing them to invest in the shares based on the advice of promising guaranteed returns and therefore, I find that the Noticees have violated the provisions of Regulation 3 (b), (c) & (d) and 4(1), 4 (2)(k) and 4 (2)(s) of the PFUTP Regulations read with Section 12A(a), (b), (c) of the SEBI Act.

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

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

29. I note that the SCN has called upon the Noticees to show cause as to why appropriate penalty be not imposed upon them under Section 15EB and 15HA

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

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

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

Section 15HA - Penalty for fraudulent and unfair trade practices

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

30.I note that Section 15EB of the SEBI Act was inserted in the SEBI Act by the Finance Act, 2018 with effect from March 08, 2019. As noted above, the Noticees continuously received investment advisory fees in their bank accounts since date of opening of such bank accounts. In view of the above, I find that the Noticees acted in violation of Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act from July, 2021. Further, as noted in above paras, Noticees also indulged in fraudulent activities of assuring guaranteed returns. Therefore, I find that the Noticees are liable to be imposed with penalty under both Sections 15EB and 15HA of the SEBI Act.

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

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

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.”

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

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

33. As observed above, I note that the Noticees received total credit of amounts to the tune of Rs.1,22,62,677/-, Rs.62,35,705/- and Rs.25,52,016/- in the said bank accounts of IDFC First Bank, HDFC Bank and ICICI Bank respectively totaling to Rs. 2,10,50,398 /- (Rupees Two Crore, Ten Lakhs, Fifty Thousand, Three Hundred and Ninety-Eight) as advisory fees. These being the proceeds of an illegal activity, are liable to be refunded to the respective clients.

DIRECTIONS

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

- (a) The Noticees shall refund all the money collected/received from any investors / complainants, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities immediately, and in any case, within a period of three months from the date of this order.
- (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 repayments to the complainants/investors shall be effected only through electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- (d) The Noticees are prohibited from selling their 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 the investment advisory services from the Noticees;
- (e) 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 34(a) above shall cease to operate upon filing of such report;
- (f) The remaining balance amount shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/complainants/investors who were availing the investment advisory services from the Noticee. Thereafter, remaining amount, if any, will be

deposited in the 'Investors Protection and Education Fund' maintained by SEBI;

- (g) In case of failure of the Noticee to comply with the aforesaid directions in subparagraph (a) and (f), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover such amounts, from the Noticee, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws,
- (h) The Noticees are debarred from accessing the securities market, directly or indirectly and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two years from the date of this order or till the date of filing of report, as directed in para 34 (e) above, whichever is later;
- (i) The Noticees shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 34(f) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws;
- (j) The Noticees are hereby imposed with penalty of Rs.5,00,000/- (Rupees Five Lakh Only) each for Mr. Vicky Alam and Mr. Durgesh Kumar under Section 15HA of the SEBI Act and Rs.1,00,000/- (Rupees One Lakh Only) each for Mr. Vicky Alam and Mr. Durgesh Kumar under Section 15EB of the SEBI Act;
- (k) 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 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.

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

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

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

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

Date: December 29, 2023

Place: Mumbai

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