

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 3(1) OF SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013

In respect of -

Sr. No.	Name of the Entity	PAN
1.	Shri. Siddhant Suresh Chandan	BQWPC6396L

In the matter of Unregistered Investment Advisory Services

BRIEF BACKGROUND

1. Securities and Exchange Board of India (“**SEBI**”) received complaints dated June 05, 2021 and August 25, 2021, with respect to the activities of Shri. Siddhant Suresh Chandan (“**Noticee**”). An examination was conducted to ascertain the veracity of the complaints and to determine whether there has been any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act, 1992**”), the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (“**IA Regulations**”) and any other Rules or Regulations made thereunder by the Noticee.
2. SEBI, prima facie, found that the Noticee is engaged in investment advisory services without obtaining a certificate of registration from SEBI after examining the aforesaid complaints, KYC documents and the screenshots of telegram/ instagram chats available on record.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice dated May 31, 2022 (“SCN”) was issued to the Noticee calling upon it to show cause as to why suitable directions under Sections 11(1), 11(4), 11B(1) and 11B(2) of the SEBI Act, including imposing monetary penalty and direction to refund advisory fees collected from investors, should not be issued against the Noticee for the alleged violation of the provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations. In order to specify the penalty provisions for the directions contemplated under Section 11B(2) of the SEBI Act, a Supplementary Show Cause Notice (“SSCN”) dated January 10, 2023 was issued to the Noticee calling upon it to show cause as to why, in addition to the suitable directions as mentioned in the SCN dated May 31, 2022, a monetary penalty under Section 15EB (for violations subsequent to March 08, 2019) and Section 15HB (for violations prior to March 08, 2019) should not be imposed on him for the alleged violations in terms of the SCN dated May 31, 2022. The aforesaid SSCN was issued to the Noticee at the address available on record by way of Speed Post and was duly delivered to the Noticee on January 13, 2022. The following documents were enclosed as annexures to the SCN dated May 31, 2022:

Annexures to SCN	
Annex.No.	Particulars
A	Complaints against the Noticee vide emails dated June 05, 2021 and August 25, 2021
B.	Copy of the Noticee’s Bank Statement from SBI Bank, Ahmedabad Branch
C.	Copy of the Noticee’s Bank Statement from ICICI Bank, Ahmedabad Branch

4. The details of the allegations made in the SCN are as under:
- 4.1. SEBI had received two complaints dated June 05, 2021 and August 25, 2021 against the Noticee in which, one of the complainants had, *inter alia*, alleged that Telegram Channel named as “BNO – Bank.Nifty.Options” which was providing market related tips is being run by the Noticee, for which the Noticee charges

amounts ranging from INR. 3,000/- (Three thousand rupees) per month to INR. 25,000/- (Twenty-Five thousand rupees) for various plans.

4.2. It was alleged in the said complaint that the premium channel has approximately 1,700 Members in Telegram, which translates the Noticee collecting approximately INR. 51, 00,000/- (Fifty-one lakh rupees) as fees per month.

4.3. The links for telegram channel are constantly changed. Some of such links are:
<https://t.me/Bankniftyoptions9>, https://www.instagram.com/bno_owner/,
<https://www.instagram.com/bank.nifty.calls/>. <https://t.me/Bnoexperts>.

4.4. It was further alleged in one of the complaints that the Noticee also provided Demat Account Handling Service, by making false promises of guaranteed returns to the tune of 200%. Over the past 1 year, he had handled Demat accounts of more than 100 members and each account had capital of INR 5 Lacs on average, and therefore, the Noticee had handled amount to the tune of Rs. 5,00,00,000 (Five Crores) during this period.

4.5. From the information provided in the complaints, it was noticed that the UPI ID – bno@icici was provided by the Noticee for making payments. Further, it was also noticed that the following two bank accounts were used by the Noticee :-

- i. SBI account no. 36508968774
- ii. ICICI Bank account no. 091705002545

4.6. The account statements, Account Opening Form (AOF) and KYC documents of the above mentioned bank accounts were obtained from the respective banks, and the details that were noted from the examination of the same are given below:-

- i. **SBI account no. 36508968774:-**
 - a. Summary of the statement

Name of the Bank Account holder	Shri. Siddhant Suresh Chandan
Address	E 404 Shilalekh, Opp Police Station Ahmedabad 380004
PAN	BQWPC6396L
Account opening date	24/01/2017
First transaction	14/02/2017
Last transaction	10/07/2021
Current status of bank account	open

- b. A total of 8964 credit entries amounting to Rs.4, 09, 65,435 could be seen in the said bank account statement during the period of examination (14/02/2017 to 10/07/2021).

ii. ICICI Bank account no. 091705002545

- a. Summary of the statement

Name of the Bank Account holder	Mr. Siddhant Suresh Chandan
PAN	BQWPC6396L
Account opening date	03/06/2021
First transaction date	05/06/2021
Last transaction date	10/08/2021
Current status of bank account	Active

- b. A total of 112 credit entries for a total amount of Rs.7, 59,599.66 could be observed in the bank account statement during the period of examination (05/06/2021 to 10/08/2021).

4.7.It was also noticed from the keywords accompanying credit entries that the following terms were repeatedly appearing in the bank statements:-

“For Service”
“Trade Service”
“Yearly Subscrip” - 2 times
“Payment for Yea”
“Premium Members”
“Deposit for Ann”
“BNO”
“Telegram Daniel”
“BNO Yearly Subs”
“One year Plan”
“Membership Fees”
“Yearly membersh”
“For yearly prem”
“For Premium ser”
“Yearly plan”
“For one year su”
“1 year premium”
“For BNO premium”
“For a year plan”
“1 year membership”
“Yearly Plan” – 2 times
“Subscription Fe”
“50 member 3000”
“yearly subscrip”
“bno calls”
“for 1 year call”

4.8. In view of the above, the Noticee was advised to provide information regarding the details of his clients who had availed investment advisory services and amount collected from them. However, no reply was received from the Noticee.

5. From the information available on record, especially the allegations made in the complaints and the key words appearing in the narrations of the credit transactions reflected in the bank accounts, it was, *prima facie*, observed that the Noticee was providing Investment Advisory services without obtaining a certification of registration from SEBI. Further, as the Noticee had failed to furnish the information sought by SEBI in respect of nature of the transactions reflected in the said bank accounts, it was alleged in the SCN that the Noticee was engaged in the act of providing investment advisory services and the entire amount i.e. Rs.4,17,25,034/- credited to the above mentioned bank accounts pertained to payments received in respect of investment advisory activities carried out by the Noticee.
6. The Noticee, vide letter dated June 20, 2022, while acknowledging the receipt of the SCN, submitted his preliminary reply to the SCN by stating that *the amounts mentioned in the SCN are not justified as no working has been provided* in support of the same. Further, the Noticee sought four to six weeks' time to submit a detailed reply to the SCN in the matter. SEBI, vide letter dated June 29, 2022, had stated that with respect to the clarification sought by the Noticee in his reply dated June 20, 2022, the details have already been provided to him in the SCN dated May 31, 2022. Also, the Noticee was requested to file his reply, if any, latest by July 15, 2022. However, vide letter dated July 15, 2022, the Noticee submitted that he is suffering from a major health issue and treatment by the doctor is on-going. In view of the same, the Noticee requested further time of minimum six weeks' to file a detailed reply in the matter. Accordingly, time till September 16, 2022 was granted to the Noticee. Thereafter, opportunity of personal hearing was granted to the Noticee on September 21, 2022 in compliance with the principles of natural justice. The Noticee, vide letter dated August 12, 2022, sought 30 days' time to file his reply and requested for adjournment of hearing. Along with the said letter, the Noticee provided SBI entries, credit entries of relatives, loan credit entries, cash deposit credit entries, online business entries, commission from work credit entries and refund given details. On request, the Noticee was granted time till September 21, 2022 to file his reply to the SCN and hearing was adjourned to October 17, 2022. However, vide

email dated October 17, 2022, the Noticee again sought adjournment of the hearing scheduled and same was adjourned to November 10, 2022. The Noticee was advised to file his reply, if any, before the date of the scheduled hearing. Subsequently, vide email dated November 08, 2022, the Noticee once again sought adjournment of hearing scheduled on November 10, 2022 on medical grounds and in support of this, the Noticee submitted a copy of Medical Prescription. Accordingly, opportunity of personal hearing was granted to the Noticee on November 24, 2022 acceding to the said request and was advised to file his reply/written submissions before the date of hearing.

7. Subsequent to issuance of SSCN regarding the proposed direction imposing penalty, as no reply was still received from the Noticee, an opportunity of personal hearing was granted to the Noticee on February 15, 2023. The Noticee submitted a reply dated February 02, 2023. On the scheduled date of hearing i.e. on February 15, 2023, the Noticee reiterated the submissions made by him in his reply dated February 02, 2023. Further, the Noticee was advised to produce documents which certified the nature of each and every transaction in the SBI bank account and ICICI bank account, along with additional documents to substantiate its submission that the money received in the bank accounts was for activities other than for unregistered investment advisory activities. Also, as requested by the Noticee, additional time till February 20, 2023, was granted to the Noticee to provide supporting documents as sought and additional submissions, if any, in the instant matter. The Noticee, vide email dated February 23, 2023, sought for 15 days' time to provide supporting documents and additional submissions. Vide email dated February 27, 2023, time till March 06, 2023 was granted to the Noticee. Further, the Noticee, vide email dated March 06, 2023, sought further 15 days' time to provide supporting documents and make additional submissions. While acceding to the said request, vide email dated March 08, 2023, time till March 13, 2023 was granted to the Noticee. However, no additional submissions have been made by the Noticee till date.

8. The submissions made by the Noticee, vide letters and emails dated August 12, 2022, October 17, 2022 and February 02, 2023, are as under:

- a) Vide letter dated August 12, 2022, the Noticee submitted that he was selling mobile cases, covers, shoes, speakers, neck fan, customized t-shirt and many gift items from 2017 till date. There is lot of confusion in the entries which seems to have been the reason that total amount of Rs.4,09,654,35/- which is mentioned in the notice has been considered as received towards investment advisory. The same is wrong.
- b) He has provided bifurcation of the credit entries in the SBI account as mentioned below:-

SBI BANK ENTRIES AC NO:- 36508968774	
TOTAL CREDIT 2017 – PRESENT AS PER SEBI	40965435
	LESS
Relatives	5580000
EXTRAS (CREDIT)	12240093
Commission from work	602267.99
Earning from online business	6619828
Loan got	4608700
FINAL AMOUNT	11314546.01

- c) He has submitted that in credit side he had got money from his father as personal loan and from friends, relatives, clients of his business who had lent him money to work for the products which he used to sell as it was drop shipping business.
- d) Further, the whole amount on credit side is not only of advisory fees but it has many reversal entries, loan entries, relatives, friends, his income through sourcing gifting merchandises, wholesale sales, drop shipping.
- e) The Noticee submitted that he had started all these businesses during the pandemic year so his sales boomed due to online shopping by people. Due to the pandemic, the Noticee states that he was not able to give any explanation to SEBI and didn't get chance to obtain the license.

- f) Vide email dated October 17, 2022, the Noticee has submitted that he was just 20 years old when he started to carry out investment advisory services in May 2020. He has stated that he got under influence of other investment advisors which are still working and not registered with SEBI, which earned huge income and some have gone Dubai so that SEBI doesn't go after them.
- g) The Noticee further stated that he was completing BBA last year, he wasn't aware of the SEBI Regulation of 2013. He was just 13 years old when the regulation came into force.
- h) The Noticee in his reply dated February 01, 2023 has submitted that during Covid lockdown, when there was no work and everything was closed, *Instagram* and *Facebook* led him in the month of April 2020 to enroll in Telegram channel DHARAMK, BOOKING BULLS by paying fees and then they will give trading tips in Stock market to make profits.
- i) Accordingly, Noticee paid fees in Telegram channel and they started giving him tips for trading in stock market. The same tips he used to forward to his friends and their friends on Whatsapp group and were doing trading in stock market.
- j) He has submitted that his friends and other people were making profits and they suggested to open Telegram channel. Based on their suggestion, he opened telegram channel and enrolled them as members for Rs.1000 and started giving tips received from other group to them.
- k) He was just 19 years of age when he started this channel and he believed that there is nothing illegal as many telegram channels were there and doing the same work.
- l) He has submitted that those who did not like the trading tips on his channel and asked for refund, he paid them back immediately. Few people insisted him to handle their demat accounts since they could not concentrate on it due to their other businesses and offered him to charge them for the services.
- m) The Noticee further submitted that the day he came to know that giving tips of telegram channel without SEBI registration is illegal, he stopped the practice immediately. People asked him reason for closing channel and he told them the

fact that he was not registered with SEBI and hence he could not continue this channel, hence they asked for refunds and he refunded all their money.

- n) The Noticee has submitted that at no point in time, he wanted to cheat people and hence he shared his PAN, Aadhar and bank account number with them. If there was any ill-will, it is the case of the Noticee that he would have collected money from users in Paytm or other means.
- o) The Noticee states that few people who wanted to take advantage of the situation and extort money from him, started to claim that all profit trades were done by them and all loss trades were done according to his tips and he should pay for all losses. Actually, there were profit and losses in trades however, net outcome was profit, but they started complaining to SEBI and police stations to extort money from him.
- p) The Noticee has admitted that telegram channel named as “BNO-Bank nifty options” was run by him for providing tips however, charges mentioned are incorrect. He was charging Rs. 500 to Rs.3000 per month.
- q) The Noticee has denied that there was income of Rs.51 lakhs per month to him. Charges were ranging between Rs.500 to Rs.3000 and just taking random number of 1700 members is incorrect and not factual.
- r) The Noticee stated that links weren’t changed constantly, he had free groups for everyone based on their capital.
- s) The Noticee has agreed that he handled demat account of few clients however they were merely 2-4 clients per month. Those clients voluntarily gave him their login id and password to handle their demat account.
- t) He has submitted that all credit entries do not belong to Telegram channel charges. There are credit entries of his other business of online sales of mobile cover and t-shirts. Further, he had taken loan from his friends and relatives to trade in the market and the same is also considered. Only credit entries have been considered however debit entries of refund paid is not taken into the account to arrive at factual positions.
- u) The Noticee has admitted that he was providing investment advisory services without obtaining SEBI registration, however, he reiterated that he was only 19

years of age when he started the telegram channel and he was unaware of such registration before giving tips on Telegram channel. He was carrying out such services by seeing others doing it.

- v) The Noticee agrees to refund income earned from these activities to people as would be guided and therefore, prays that no penalty may be imposed on him for the said violation of the applicable laws.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully considered the allegations made in the SCN, SSCN along with the findings of examination by SEBI stated therein, submissions made by the Noticee in his replies to the SCN and SSCN and the documents available on record.

10. I note that the issue that arises for consideration in the present proceeding is whether the Noticee has acted as an unregistered investment adviser in violation of the provisions of the SEBI Act, 1992 and the IA Regulations. In this regard, I note that the definition of 'Investment Adviser' as given under Regulation 2(1)(m) of the IA Regulations is as follows:

"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;"

11. Further, Regulation 2(1)(l) of the IA Regulations, which defines 'investment advice', reads as follows:

"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:

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;"

12. For ease of reference, the provisions of the SEBI Act, 1992 and IA Regulations alleged to have been violated by the Noticee are reproduced as under:

SEBI Act, 1992

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

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

SEBI (INVESTMENT ADVISER) REGULATIONS, 2013

“Application for grant of certificate.

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

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation (2) within the said period of six months, till the disposal of such application.”

13. I note that SEBI had received complaints alleging that the Noticee was providing investment advisory services in lieu of consideration. Further, one of the complainants has stated that the Noticee was running telegram Channel named as “BNO- Bank.Nifty.Options”. Further, the complainant has stated that the said channel is being run by the Noticee, falsely sharing information as knowledge sharing program, in order to lure people to pay amounts ranging from Rs. 3000/- per month to Rs. 25000/- for various knowledge sharing platforms. It has been alleged by the complainant that as on the date of the complaint, the telegram premium channel operated by the Noticee had approximately 1700 members on the telegram channel, which calculates as 1700 members * Rs.3000/- = Rs.51, 00,000 per month.

14. In order to ascertain the details of services provided by the Noticee, I find that during the examination period SEBI, vide letter dated August 06, 2021, had advised the Noticee to provide information regarding the details of his clients who had availed investment advisory services and amounts collected from them. The Noticee, vide letter dated August 11, 2021, had sought 45 days' time period to furnish all the information and details. Further, time was granted to the Noticee till August 24, 2021 to provide the requisite information. However, I find that the Noticee has not provided the said information till date.
15. I note from the screenshots of the telegram chats that the Noticee was charging for premium BNO services which have been mentioned on the channel of the Noticee as "BNO PREMIUM" and "NIFTY.OPTIONS". Under the aforesaid headings, for each service, the SCN alleges that Rs.3000/- have been charged. Further, the details of the UPI account (bno@icici) for transferring the payments for availing the services are also available on the screenshots of the channel.
16. I note from the replies submitted by the Noticee during the proceedings before me that he has admitted that he had a telegram channel with the name "*BNO-Bank Nifty Option*" and that he was charging between Rs. 500 to Rs. 3000 per month for the advice provided by him to the members of the said channel.
17. I further note from the available records that the bank accounts with State Bank of India and ICICI Bank, Ahmedabad Branches, were opened in the name of the Noticee and credits amounting to Rs. 4,09,65,435/- and Rs. 7,59,599.66/-, respectively, have been noticed in the said accounts from several individual investors during the periods February 14, 2017 to April 27, 2020 and June 05, 2021 to August 10, 2021, respectively. Further, the narration for certain credit entries viz. *trade service, BNO yearly Subs, For BNO premium, subscription fees, for 1 year call, for service, BNO, membership fees, etc.* establishes that the amounts received in the said bank accounts were towards the investment advisory services offered by the Noticee. Therefore, it is evident that the aforesaid services were offered by the Noticee in lieu of consideration and establishes beyond doubt that the said services

were nothing but investment advisory services for consideration to lure the investors at large. The Noticee has even admitted that he was carrying out investment advisory services without obtaining a certificate of registration from SEBI as he was unaware of the IA Regulations and was influenced by a few other people who were engaged in such activities and had earned lot of money.

- 18.** I note that though the Noticee has claimed that he was carrying on online business of selling of certain products as well during the relevant period and that certain credit entries in the SBI Bank account were in lieu of his online business, the same has not been supported by him by producing any documentary evidence such as screen shots of payments made by the purchasers towards products, bank entries with narration showing sale of products, payment of taxes for the sale of products such as VAT, material used to advertise the products sold to the potential clients, any whatsapp chats, confirmation of payments, etc. Further, with respect to his claims of loans taken from relatives and friends and such credit entries showing in his bank account, I note that the Noticee has not provided any cogent evidence in support of the said submission. Neither has the Noticee provided any CA Certificate and / or Tax Certificate in support of his submissions nor has the Noticee provided any receipts, whatsapp chat screenshots, payment proof, etc. in support of his contentions. A bare submission that it includes entries on other different counts, without even stating which amounts they were and not supporting the same with relevant proof to show that the entries were for the purposes stated by him is not sufficient. In fact, during the examination, the Noticee had replied to SEBI saying he will furnish the requisite details sought for in 45 days' time. However, there was no reply thereafter. I note that it is only after the issuance and receipt of the SCN that he has made the claim that the entries in his bank accounts include loans, online sales, consideration, etc. Non-cooperation on the part of the Noticee at the examination stage itself also indicates that the claim of the Noticee is only an afterthought especially when the same is not supported with any documentary evidence. Therefore, I do not find any merit in the said submissions of the Noticee and the same cannot be considered in the instant case.

- 19.** I further note that the Noticee in his submissions has stated that he had handled demat account of few clients i.e. merely 2-4 clients per month and clients voluntarily provided him their login id and password to handle their demat account. The said submissions is nothing but an admission that he has handled client demat accounts while carrying out unregistered investment advisory services.
- 20.** From the foregoing, I find that the Noticee, i.e. Shri Siddhant Suresh Chandan, was offering investment advisory services through his telegram channel and was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products. Therefore, I find that in terms of Regulation 2(1) (l) of IA Regulations, the Noticee was providing “investment advice” through the said Telegram Channel.
- 21.** 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 advise 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. As noted above, the Noticee has received Rs. 4,09,65,435 /- and Rs. 7,59,599.66/- i.e. a total of Rs. 4,17,25,034/- in his bank accounts for the investment advisory services provided by him. Although the Noticee claims that these monies were received on various other counts, he has not supported such claim by any valid evidence as described at para 18 above. Hence, as mentioned in the preceding paragraph, I find that these services were being offered by the Noticee *in lieu* of the consideration and thus, acting as investment adviser/s, as defined under Regulation 2(1) (m) of the IA Regulations.
- 22.** 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 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 non-refundable 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.

23. I note that safeguards provided under IA Regulations, 2013 requires continued minimum professional qualification and net-worth requirement for investment adviser, including disclosure of all conflict of interest, prohibition on entering into

transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client based on client's objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc. These requirements are aimed at protection of investor's interest.

- 24.** 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"*.
- 25.** Thus, the activities of the Noticee, as brought out above, seen in the backdrop of the aforesaid provisions show that he was acting as an investment adviser by giving tips / advice through his Telegram Channel and was also handling demat accounts of his clients for the said purpose. However, the Noticee was not registered with SEBI in the capacity of an Investment Advisor. Hence, these activities were being carried out by the Noticee without holding the certificate of registration as an investment adviser and therefore, I find that the Noticee has violated the provisions of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations. As already mentioned above, the Noticee has collected an amount of Rs. 4,17,25,034/- (Rupees Four Crore Seventeen Lakhs Twenty Five Thousand and Thirty Four Only) towards consideration in his bank accounts held with SBI Bank and ICICI Bank, Ahmedabad Branches for the said investment advisory services provided to various investors. Thus, in the light of findings in the preceding paragraphs, I am of the considered view that the Noticee is liable to refund the aforementioned amount collected as an unregistered investment adviser.
- 26.** In view of the aforesaid violations committed by the Noticees, I find it appropriate to issue necessary directions under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) of the SEBI Act, 1992.

27. The SSCN referred above, also called upon the Noticee to explain as to why appropriate penalty be not imposed on him under Section 15EB and 15HB of SEBI Act, 1992 for the alleged violations. In this regard, before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions for necessary reference.

“Penalty for default in case of investment adviser and research analyst.

15EB. *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.”*

15HB. Penalty for contravention where no separate penalty has been provided.

“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”

28. It is relevant to mention here that for determining the amount of penalty to be imposed under the provisions of the SEBI Act, 1992, guidance is provided under Section 15J of the SEBI Act, 1992 which is reproduced as under:

“15J. Factors to be taken into account while adjudging quantum of penalty.

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.”

29. I note that the allegation that the Noticee has acted as an investment adviser without obtaining a certificate of registration from SEBI has been clearly established in the preceding paragraphs and therefore, it has been concluded that the Noticee has violated Regulation 3(1) of the IA Regulations read with Section 12 of the SEBI Act, 1992. In view of the same, I find that the penalty under Sections 15EB and 15HB of the SEBI Act, 1992 is clearly attracted for the said violations of the provisions of law.

ORDER AND DIRECTIONS

30. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 19 of the SEBI Act, 1992, hereby issue the following directions:

- a. The Noticee shall, within a period of three months from the date of coming into force of this direction, refund the money received from any complainants/ investors, as fees or consideration or in any other form, in respect of the unregistered investment advisory activities;
- b. The Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;
- c. The repayments to the complainants/ investors 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;
- d. The Noticee is prevented from selling his assets, properties and holding of mutual funds/shares/securities held by him in demat and physical form except for the sole purpose of making the refunds as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/ investors/ complainants who were availing the investment advisory services from the Noticee, as directed in this order, from the bank accounts of the Noticee;

- e. After completing the aforesaid repayments, the Noticee shall file a report of such completion with SEBI addressed to the “Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051”, within a period of 15 days, after completion of three months from the coming into force of the directions at para 30 (a) and (b) above, duly certified by an independent Chartered Accountant and the direction at para 30 (d) above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors;
- 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 sub-para (a) and (e), 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 Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two (2) years from the date of this order or till the expiry of two (2) years from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI, as directed in paras 30(a) and 30(f), whichever is later;
- i. The Noticee is hereby imposed with a penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 15EB of the SEBI Act, 1992 and Rs.1,00,000/- (Rupees One Lakh Only) under Section 15HB of the SEBI Act, 1992 and further is directed to pay the penalties within a period of forty-five (45) days, from the date of receipt of this order;

- j. The Noticee shall remit / pay the said amounts of penalty through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders ->Orders of EDs/CGMs -> PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.
- k. The Noticee shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 30 (h) 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.
- 31.** The direction for refund, as given in para 30(a) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.
- 32.** This order shall come into force with immediate effect.
- 33.** A copy of this order shall be sent to the Noticee, recognized Stock Exchanges, the relevant Banks, Depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with.

Date: March 15, 2023

Place: Mumbai

Dr. ANITHA ANOOP
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA