

QJA/GPG/WRO/WRO/21970/2022-23

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

Under Sections 11(1), 11(4), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992.

In respect of –

Noticee no.	Name of the Noticee	PAN/AADHAAR
1.	Crude Oil Tipswala (Proprietor: Shri Jitendra Kumar Ganeshlal Bata)	CBPPB5447N
2.	Shri Goutam Sarvar	BBFPJ8655P
3.	Shri Mukeshbhai Ramanbhai Muniya	270468364760

In the matter of Unregistered Investment Advisory Services by Crude Oil Tipswala

1. The present proceedings emanate from Show Cause Notice dated June 23, 2022 (hereinafter referred to as “**SCN**”), issued by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against Crude Oil Tipswala, alongwith, Jitendra Kumar Ganeshlal Bata, Goutam Sarvar and Mukeshbhai Ramanbhai Muniya (hereinafter collectively referred to as “**Noticees**”) as the unregistered investment advisor activities of the Noticees were prima facie found in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) read with Regulation 3 of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”).
2. I note that the SCN alleges the following:
 - (i) SEBI had received a complaint against Crude Oil Tipswala from one Shri Gopal K Poddar (hereinafter referred to as “**complainant**”), wherein, it was *inter alia* alleged by the complainant that he had availed the investment advisory services of Crude Oil Tipswala and had suffered losses. It was further alleged in the complaint that owing to the losses he had sought refund of the

payment made, but the phone calls remained unattended and no response was received for his messages on Whatsapp.

- (ii) Upon examination of the matter by SEBI, it was observed that Crude Oil Tipswala had a live website with the domain name www.crudeoiltipswala.com through which it was offering various investment advisory service to its clients. Though the website was not active during the examination, the web pages of the website were downloaded from web.archive.org. The downloaded pages of the website were examined and pursuant to such examination the following were observed:

- a) It was observed from the said webpages that Crude Oil Tipswala was providing tips related to trading in commodity derivatives through the website. The email ID mentioned on the website was crudeoiltipswala1947@gmail.com and the phone number provided on the website was 8469955462. This number was referred by the complainant in the complaint filed with SEBI. It was also observed that two bank accounts, one of Mukeshbhai Ramanbhai Muniya and another of Goutam Sarvar maintained with State Bank of India, had been provided on the website for the prospective clients to make payments.
- b) The following were inter-alia disclosed on the website www.crudeoiltipswala.com of Crude Oil Tipswala (as observed from the downloaded web pages):

“MCX Commodity Market’s No.1 Crude Oil Tipswala”

Crude Oil Tipswala is trusted name in the field of Commodity advisory and Intraday tips. We provide intraday call tips through SMS with an accuracy of 92%-98%. Crude Oil Tipswala provide services for both the beginner and the pro whether you are trading for first time in the market will help the beginners trade in the market. Our trade techniques make you a sensible investor or it will help you make your investment accurate and proper. We can assure you about the excellent quality of tips and profit earning strategy. Crude Oil Tipswala focuses on excellent services to the clients which is possible through a

composed pool of employees. Employees are the most important asset to our company. We show a lot of confidence in our employees. Consequently, the environment within our company is comfortable to work. If you want to be part of our vibrant company. A great product gains acceptance and recognition if it is delivered correctly and at the end, the customer is satisfied. The sales force at Epic treats its customers with high regard. We realise what our clients are looking for and we strive to meet their financial goals in a smooth manner. Right after the first contact is made with a client, our sales professionals maintain touch with the client and support them in making the right choice with regards to the product and the payment plan that fits exactly with the client's risk bearing capacity and short/long term financial targets. We go a step further for our premium and HNI clients and dedicate a sales professional to assist them at every step during payments, trading and post trading.

- c) The details of services/packages offered and assurances given (as mentioned on the website) at: www.crudeoiltipswala.com

Package	Duration	Fees (Rs.)
Normal Package	1 month	6500/-
Normal Package	3 months	18000/-
Normal Package	6 months	35000/-
HNI Package	1 month	9500/-
HNI Package	3 months	25000/-
HNI Package	6 months	50000/-

- d) It was also *inter alia* mentioned in the website that Crude Oil Tipswala provided 99% accuracy tips package and intraday call tips through SMS with an accuracy of 92-98%. The website also mentioned past performance of tips provided. Further, the website disclosed two bank accounts for the purpose of making payments towards investment advice. The details of the bank accounts displayed on the website are mentioned below:

Name	Bank	Account No.
Goutam Sarvar	SBI	61037567756
Mukeshbhai Ramanbhai Muniya	SBI	20351229453

- e) Vide SEBI letter dated February 15, 2021, Goutam Sarvar was advised to give details of the website and his above referred bank account. Vide letters dated March 16, 2021 and April 16, 2021, Goutam Sarvar *inter alia* submitted the following:
- The website was created by his grandson Jitendra Bata and it was his grandson who was providing tips relating to crude oil on the website.
 - His name and bank account no. 61037567756 with SBI appearing on the website had been provided by his grandson Jitendra Bata.
 - The name and account number appearing on the website were provided for taking fee from the clients who were interested in getting tips relating to the investment in crude oil.
 - The amount of Rs.4000/- credited to his account dated 20/02/2020 was relating to tips provided to Gopal K Poddar and that he had given back the money to Gopal K Poddar.
- f) Further vide the above referred letter dated April 16, 2021, Goutam Sarvar had also provided bank account details of Jitendra Bata which are as under:

Name of bank	Account Number	Holder Name
SBI	20216283531	Jitendrakumar Ganeshlal Bata

- g) Account opening forms and know your client documents and bank statements were obtained with regard to the aforesaid bank accounts. On analysis of the bank accounts, the following were observed:

Observations from SBI account no. 61037567756:

- Name of the account holder: Goutam Sarvar.

- ii. Statement period: January 09, 2008 (date of account opening) to September 14, 2020.
- iii. Amount of credit received during statement period: Rs.4,78,157/-.
- iv. Status of account: the account was closed on September 14, 2020.
- v. Transaction tracing: the amount transferred by the complainant, (Shri Gopal K Poddar), is traced in the bank statement vide transaction dated 20.02.2020 (IMPS005112134548).

Observations from SBI account no. 20351229453:

- i. Name of the account holder: Mukeshbhai Ramanbhai Muniya.
- ii. Statement period: June 04, 2016 (date of account opening) to December 28, 2020.
- iii. Amount of credit received during statement period: Rs.8,08,862/-.
- iv. Status of account: the account was last operated on December 28, 2020.

Observations from SBI account no. 20216283531:

- i. Name of the account holder: Jitendrakumar Ganeshlal Bata
- ii. Statement period: August 27, 2014 (date of account opening) to June 28, 2021.
- iii. Amount of credit received during statement period: Rs.29,74,942/-
- iv. Status of account: the account was last operated on June 28, 2021.

- h) Further, in response to SEBI letter dated August 02, 2021, Jitendra Bata vide his replies dated August 18, 2021 and August 24, 2021 submitted details of the funds received from various clients in aforementioned bank accounts. The details of the same are given below:

Name	No. of clients	Total amounts received (Rs.)
Mukeshbhai Ramanbhai Muniya	111	5,58,364/-
Jitendra Ganeshji Bata	32	1,47,100/-
Goutam Sarvar	62	2,25,710/-

- i) Upon analysis of above bank accounts, it was observed that there were credit entries in the bank account statements, with narrations like “tips, crude tips, crude oil tips, share tips, advisory fees etc”, indicating that these entries pertain to fees received from various clients, which are in the nature of unregistered advisory services offered to the clients. Also, the amount transferred by the complainant was traced in the bank statement of Goutam Sarvar, through the mobile number of the complainant, bearing the details: IMPS005112134548 dated February 20, 2020.
 - j) From the above, it was observed that Crude Oil Tipswala through its website, disclosed that it was providing investment advisory services and also provided details of Bank Accounts for the purpose of remitting the fees for the service offered. It was noted that various credits, with narrations like “Tips, crude tips, crude oil tips, share tips, advisory fees etc”, were also reflected in the account statement of bank accounts mentioned in the website. Further, Mr. Sarvar, vide his letter dated March 16, 2021 has *inter alia* admitted that the said website was created by his grandson (Jitendra Bata) for providing tips relating to crude oil, for which fees were charged. Therefore, it is observed that the said bank accounts were used for the purpose of recovering advisory fees from various clients/entities towards providing unregistered investment advisory services.
3. The Noticees was asked to show cause as to why suitable directions under Sections 11(1), 11(4), 11B(1) and 11B(2) of the SEBI Act should not be issued against the Noticees for violation of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of IA Regulations, 2013, as alleged in the SCN.
4. The SCN dated June 23, 2022 was served via speed post and delivered to all the Noticees. However, no reply was filed by the Noticees. An opportunity for personal hearing was granted to the Noticees on October 13, 2022 which was

duly delivered. The Noticees did not appear for the hearing nor submitted any letter seeking adjournment. Another opportunity for personal hearing was granted on November 03, 2022, which was attended by Noticee no. 1, Jitendrakumar Ganeshlal Bata via video conferencing, on behalf of all the Noticees. The Noticee no. 1 sought 15 days' time to file written submissions and the same was granted to him. Thereafter, Noticee no. 1 filed submissions vide letter dated November 08, 2022, on behalf of all the Noticees.

5. The Noticee no.1 vide letter dated November 08, 2022, has on behalf of all the Noticees, *inter alia* submitted the following:
- a) *That I have created the website Crude Oiltipswala (hereinafter referred at as "COT") without registering the same with SEBI to provide the services of providing tips related to only commodity of crude oil derivative traded on MCX on the website.*
 - b) *That website was crudeoiltipswala1947@gmail.com created and owned by me (Jitendra Bata) on 20-06-2016. I wish to clarify that other parties are neither the owner nor creator of "COT". This "COT" now has been closed on 30-09-2020. I have given the bank accounts of my grandfather Goutam Sarvar and my friend Mukeshbhai Ramanbhai Muniya, both of them are not responsible for creation and ownership of "COT".*
 - c) *That I Jitendra Bata is the main owner of the said "COT" and Goutam Sarvar and Mukeshbhai Ramanbhai Muniya has nothing to do with this "COT" except consented to used their bank accounts for collecting this fees.*
 - d) *That para nos. 4,5,6, and 7 of your letter no. SEBI/WRO/25831/4 dated 23.06.2022 where correctly the part of my website.*
 - e) *That as per para no.8(d) of your letter no. SEBI/WRO/25831/4 dated 23.06.2022 have received the fees for tips of Rs.4000/- on dated 20.02.2020 from Gopal K Poddar which was returned back to Gopal K. Poddar on dated 15.03.2021 of Rs.9500/- including fees received earlier. Matter with Gopal K Poddar was amicably resolved and he has taken back the complaint.*

f) That of para 11 of your letter no. SEBI/WRO/25831/4 dated 23.06.2022 I wish to state that your observations are not fully correct as far as credit amount on account of "COT". The correct credit amounts on the account mentioned by you is as under,

(i) Rs.4,78,157/- in SBI A/c No. 61037567756 of Goutam Sarvar

(ii) Rs.8,08,862/- in SBI A/c No.20351229453 of Mukeshbhai Ramanbhai Muniya.

Above two receipts are not the fees receipts on account of "COT", however receipt on account of "COT" as mentioned in para no.12 in your letter no. SEBI/WRO/25831/4 dated 23.06.2022 i.e. Rs.2,25,710/- in SBI A/c No.61037567756 of Goutam Sarvar and Rs.5,58,364/- in SBI A/c No. 20351229453 of Mukesh Ramanbhai Muniya in correct.

g) In case of SBI A/c No.20216283531 of Jitendra Bata only Rs.1,47,100/- was received on account of "COT" is correct as mentioned in para no.12 of your letter no. SEBI/WRO/25831/4 dated 23.06.2022.

h) In total I have received Rs.9,31,174/- on account of "COT". And I have offered the same for income tax purpose.

i) That keeping above facts in view, I have created "COT" being an investment advisor for Trading in Crude Oil Derivative without obtaining the certificate of Registration for which I want to state that I was not having the knowledge of obtaining the Registration certificate before starting the service.

j) Therefore, I request your goodself not to initiate and levy the penalty. In this connection I assure you in future that I will not commit any such type of mistakes. On knowing this mistake immediately I have closed down this advisory website of "COT" on 30.09.2020.

k) Further I repeat that I Jitendra Bata is the main owner of the said "COT" and Goutam Sarvar and Mukeshbhai Ramanbhai Muniya has nothing to do with this "COT" except consented to used their bank accounts for collecting this fees.

Consideration of submissions and findings:

6. I have considered the allegations made in the SCN alongwith the reply filed by the Noticees vide letter dated November 08, 2022 and all the material available on record. The SCN has alleged that the Noticees had carried out investment advisory activities without obtaining registration from SEBI in violation of the provisions of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations. The aforementioned provisions of law read as under:

Provisions of the SEBI Act:

“Section 12 of the SEBI Act – 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:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a 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 immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.”

Provisions of the IA Regulations:

“Regulation 3 of the IA Regulations – 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:

7. I note that, the Noticee no. 1 i.e. Jitendrakumar Ganeshlal Bata, has made submissions on behalf of all the Noticees. I note that the Noticee no. 1 has not denied the allegations that they have been providing investment advisory services. The Noticee no. 1 submitted that he created the website of Crude Oil Tipswala on June 20, 2016, for providing tips, without registering the same with SEBI and the website is owned by him. Noticee no. 1 has submitted that the other Noticees neither own nor created the website and that he had given the bank accounts of his grandfather, Goutam Sarvar (Noticee no. 2) and friend, Mukeshbhai Ramanbhai Muniya (Noticee no. 3), who had nothing to do with Crude Oil Tipswala except giving their consent to use their bank accounts for collecting fees. The Noticee no. 1 submitted that the details of fees collected by him have been provided by him vide letters August 18, 2021 and August 24, 2021 and therefore, the amount of Rs. 9,31,174/- should be treated as the correct amount. Further, that the amount of Rs.9,31,174/- has been offered by him for income tax purpose. The Noticee no. 1 submitted that he had no knowledge about obtaining the Registration certificate before starting the service of being an investment advisor.
8. From the aforesaid submissions of the Noticees, I note that, Noticee no. 1 has made submissions on behalf of all the Noticees and has neither denied nor disputed the allegations made in the SCN, that they were providing investment advisory services. I note that, Noticee no. 1 has accepted the responsibility and submitted that he was unaware of the process of registering as an investment adviser. I note that the Noticee no. 1 has taken sole responsibility of creating and owning Crude Oil Tipswala and its website and has submitted that Noticee no. 2 and 3 have merely given their consent to use their bank accounts for collecting fees. Further, the Noticee no. 1 submitted that the details of fees collected by him have been provided by him vide letters August 18, 2021 and

August 24, 2021 and the amount Rs.9,31,174/- (collectively from all the aforesaid bank accounts) should be treated as the correct amount collected as advisory fees by the Noticees. Further, from the submissions made by the Noticee no. 1, I note that with regard to Noticee no. 2, he has provided details of fees collected from the date February 24, 2019, with regard to Noticee no. 3, he has provided details of fees collected from the date June 28, 2016 and for his own account, from the date May 28, 2018. However, I note that the amount claimed by the Noticees as advisory fees i.e. Rs.9,31,174/- (from the aforesaid 3 bank accounts) does not commensurate with the credit amounts shown in the Bank Accounts of the Noticees. I also note that the Noticee no.1 has submitted that the website was created on June 20, 2016. I note from the bank statement of Jitendrakumar Ganeshlal Bata (Noticee no. 1), that between June 20, 2016 and May 28, 2018, there is a credit transaction dated December 07, 2017 with the description "TIPS", there is a credit transaction dated March 23, 2018 with the description "CRDTIPS" and a credit transaction dated April 07, 2018 with the description "ADVISORY F", which have not been taken into consideration by him as part of the investment advisory fees collected by him. Likewise, I note from the bank account of all the 3 Noticees, that there are various credits from June 20, 2016, which have not been explained by the Noticees and have not been taken into account by Noticee no.1, in his submitted figure of Rs.9,31,174/-. Accordingly, I find that all the credit transactions in the bank accounts of all the Noticees from June 20, 2016 (i.e. the day the website was created by Noticee no. 1), shall be considered as the amount of fees collected by the Noticees towards investment advisory services. Further, I also note that the Noticee has also not provided any supporting documents with respect to his claim that the amount of Rs.9,31,174/- has been shown for income tax purpose. In view of the above, I find that the Noticees claim that only Rs.9,31,174/- has been collected as advisory fees is untenable and I find that the amount of Rs.39,26,741.71, which is the total credit amount from all the 3 bank accounts, shall be treated as the total amount received by the Noticees as Advisory fees.

The details of the relevant statement period and amount credited are as given below:

Name of account holder	SBI Account No.	Statement Period	Amount credit (Rs.)	Status of account
Goutam Sarvar	61037567756	20/06/2016 to 14/09/2020	3,63,115.84	Account opened on 09/01/2008 and closed on 14/09/2020
Mukeshbhai Ramanbhai Muniya	20351229453	20/06/2016 to 28/12/2020	8,07,662.15	Account opened on 04/06/2016 and last operated on 28/12/2020
Jitendrakumar Ganeshlal Bata	20216283531	20/06/2016 to 28/06/2021	27,55,963.72	Account opened on 27/08/2014 and last operated on 28/06/2021
Total			39,26,741.71	

9. Further, the submission of Noticee no. 1, that Noticees no. 2 and 3 have nothing to do with Crude Oil Tipswala except giving their consent for usage of their bank account for collecting fees, is untenable, as it is the bank accounts of Noticees no. 2 and 3 which were provided on the website www.crudeoiltipswala.com, hence making them the beneficiaries of the monies collected from the website from clients/investors, which included the complainant. Further, no amount can be withdrawn from these accounts without the consent of the account holder. I also note that the Noticees have not provided any supporting documents or evidence to prove that Noticees no. 2 and 3, who were beneficiaries, were not involved in the unregistered investment advisory scheme of the Noticees. In the given facts and circumstances, I find that all the Noticees were responsible for the unregistered investment advisory services provided through Crude Oil Tipswala and its website www.crudeoiltipswala.com.

10. In this regard, I note that the website www.crudeoiltipswala.com inter alia claimed as follows:

Crude Oil Tipswala is trusted name in the field of Commodity advisory and Intraday tips. We provide intraday call tips through SMS with an accuracy of 92%-98%. Crude Oil Tipswala provide services for both the beginner and the pro whether you are trading for first time in the market will help the beginners trade in the market. Our trade techniques make you a sensible investor or it will help you make your investment accurate and proper. We can assure you about the excellent quality of tips and profit earning strategy. Crude Oil Tipswala focuses on excellent services to the clients which is possible through a composed pool of employees. Employees are the most important asset to our company. We show a lot of confidence in our employees. Consequently, the environment within our company is comfortable to work. If you want to be part of our vibrant company. A great product gains acceptance and recognition if it is delivered correctly and at the end, the customer is satisfied. The sales force at Epic treats its customers with high regard. We realise what our clients are looking for and we strive to meet their financial goals in a smooth manner. Right after the first contact is made with a client, our sales professionals maintain touch with the client and support them in making the right choice with regards to the product and the payment plan that fits exactly with the client's risk bearing capacity and short/long term financial targets. We go a step further for our premium and HNI clients and dedicate a sales professional to assist them at every step during payments, trading and post trading.

The details of services/packages offered and assurances given (as mentioned on the website) at: www.crudeoiltipswala.com

<i>Package</i>	<i>Duration</i>	<i>Fees (Rs.)</i>
<i>Normal Package</i>	<i>1 month</i>	<i>6500/-</i>
<i>Normal Package</i>	<i>3 months</i>	<i>18000/-</i>

<i>Normal Package</i>	<i>6 months</i>	<i>35000/-</i>
<i>HNI Package</i>	<i>1 month</i>	<i>9500/-</i>
<i>HNI Package</i>	<i>3 months</i>	<i>25000/-</i>
<i>HNI Package</i>	<i>6 months</i>	<i>50000/-</i>

<u>Crude Oil HNI Pkg. Details:</u>	<u>Crude Oil Normal Packages Details</u>
<i>99% Accuraty Tips Package</i>	<i>95% Accuraty Tips Packages</i>
<i>Daily 45-55 point 1st TGT</i>	<i>Daily 1 call 30-40 point 1st target</i>
<i>1 month 1,00,000 UP Profits</i>	<i>(1 lots) 1 month 60,000 UP Profits</i>
<i>1 month 2-3 SL Hits changes</i>	<i>1 month 1-2 SL Hits Changes</i>
<i>Daily 1 call provide</i>	<i>95% sure shot tips provider</i>
<i>100% sure shot tips provide</i>	

The payment details provided on the website are as given below:

Payment:

State Bank of India,

A/c Name: MR. GOUTAM SARVAR

Account no. 61037567756

IFSC Code: SBIN0031225.

State Bank of India

A/c Name: MR. MUKESHBHAI RAMANBHAI MUNIYA

Account no. 20351229453.

11. From the above, I note that the website www.crudeoiltipswala.com provided various services in commodities and intraday tips. The website stated that Crude Oil Tipswala provided 99% accuracy tips package and intraday call tips through SMS with an accuracy of 92-98% and 100% sure shot tips and were offering various plans/packages in this regard. Further, I find that the Noticees were running the website and receiving the consideration in lieu of the investment advice rendered on the website by offering various

services/plans/packages as tabled above. In this regard, I note that bank account details of Noticee no. 2 and 3 with State Bank of India were provided on the website, details of which have been provided above. Further, Noticee no. 1 vide his letter dated August 18, 2021 has submitted that he had also received fees in his bank account no. 20216283531 with State Bank of India and provided details of the same. From the aforesaid bank statements of the Noticees, I note that the narrations for the credit entries included terms, such as tips, crude tips, crude oil tips, share tips, advisory fees etc. I note that the Noticees have not denied or disputed that fees/payments were received in the aforesaid bank accounts of the Noticees for rendering investment advisory services. I also note that the transactions indicated by the complainant were traced in the bank statement of Noticee no. 2 vide transactions dated February 17 and 20, 2020 (transaction nos. INB IMPS004811765826 and INB IMPS005112134548) for a total of Rs. 9,000/-. I note that the Noticees have submitted that they had received fees to the total amount of Rs.9,31,174/-. However, as discussed in detail in para 8 above, I find that the Noticees had collected a total amount of Rs.39,26,741.71, which shall be treated as the total fees/payments received by the Noticees, towards rendering investment advice.

12. From the aforesaid facts and submissions made by the Noticees, I find that the Noticees were engaged in giving advice relating to investing, purchasing, selling or otherwise dealing in securities or investment products, through the website, www.crudeoiltipswala.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 providing “investment advice” through the aforesaid website. As noted above, the Noticees received Rs.39,26,741.71, from clients for the investment advisory

services provided by the Noticees. 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 Adviser' as given in Regulation 2(1)(m) of the IA Regulations, 2013.

13. I also note that, 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 SEBI Act, 1992 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."

14. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 have been framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under Regulation 3(1) of the IA Regulations, 2013, which, inter alia, provides that, 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 SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further, safeguards provided under IA Regulations, 2013

include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

15. 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, 2013:

- (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 recognised 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.
16. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticees were holding itself out and were acting as an investment adviser, although the Noticees were not registered with SEBI in the capacity of an investment adviser. Hence, I find that these activities/representations as were being made by the Noticees without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.
17. Moreover, as stated above, SEBI Act, 1992 and IA Regulations, 2013 mandate that an investment advisor has to hold a certificate of registration to act as such. However, as already pointed out above, I find that the Noticees were not holding any certificate of registration from SEBI to act as an investment advisor.
18. The SCN had called upon the Noticees to show cause as to why a direction for refund of the money received from any complainants /investors, as fees or consideration in respect of their unregistered investment advisory activities, be

not issued against it. As discussed in para 8 above, as per the material available on record, the amount of fees collected by the Noticees in their bank accounts, as a result of providing '*Investment Advice*' to investors, amounted to Rs.39,26,741.71. In view of the above, I am of the considered view that the Noticees are liable to refund the amount of Rs.39,26,741.71 collected as an unregistered investment adviser to their clients/investors.

19. The SCN in the matter, also calls upon the Noticees to explain as to why appropriate penalty be not imposed upon them under Section 15HB of SEBI Act, 1992 for the violations alleged in the SCN. Relevant extract of the penalty provisions, is reproduced, hereunder:

Penalty for contravention where no separate penalty has been provided.

Section 15HB of SEBI Act, 1992. *"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".*

20. Upon a consideration of the above penalty provisions, I find that Section 15HB has been invoked for failing to comply with Regulations 3(1) of the IA Regulations, 2013 i.e. that no person shall act as an investment adviser or hold himself out as an investment adviser unless he has obtained a certificate of registration from the Board under these Regulations. I note that the above allegation that the Noticees has acted as an investment adviser without obtaining a certificate of registration from SEBI has been clearly established in the preceding paras and therefore, I find that the penalty under Section 15HB of the SEBI Act, 1992 is clearly attracted.
21. For imposing of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides 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.”

22. As discussed in the aforesaid paras, I note that the complainant had stated in his complaint that he had paid Rs.9500/- to the Noticee no. 1 and sought refund of the same but the phone calls to the Noticee remained unattended nor did the complainant receive any response to the messages sent. Further, from the material available on record, and discussed in para 8 above, I note that the amount of fees collected by the Noticees in the bank accounts, as a result of providing ‘Investment Advice’ to investors, amounted to Rs.39,26,741.71. I also note that Noticee no. 1 has submitted that he had created and owns the website www.crudeoiltipswala.com and that Noticees no. 2 and 3 are not responsible for the same.

23. In consideration of the above, I shall now proceed with the directions and imposition of monetary penalties.

Directions:

24. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4), 11B(1) and 11B(2) read with of Section 19 of the SEBI Act, 1992, hereby direct that:

(a) The Noticees shall within a period of three months from the date of this Order, refund the money received from any complainants/investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;

(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, 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 order;

- (c) The repayments to the investors/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;
- (d) After completing the aforesaid repayments, within a period of 15 days, the Noticees shall file a report detailing the amount refunded, to SEBI addressed to the Division Chief, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051. The report should be duly certified by an independent Chartered Accountant and indicate the amount, mode of payment by banking transactions, name of the parties, communication address, mobile numbers and telephone numbers etc.
- (e) 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 Noticees. Thereafter, remaining amount, if any, will be deposited in the Investors Protection and Education Fund maintained by SEBI;
- (f) The Noticees are restrained from selling his assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds/depositing balance amount with SEBI, as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the investors/clients/ complainants who were availing the investment advisory services from the Noticees and depositing

balance amount with SEBI, as directed in this order, from the bank accounts of the Noticees;

- (g) The Noticees are 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 6 (six) months from the date of this Order or till the expiry of 6 (six) months from the date of completion of refunds to investors/clients along with depositing of balance amounts, if any, as directed in para 24(a) and 24(e) above, whichever is later;
- (h) Upon submission of report on completion of refunds to complainants/ investors to SEBI and deposit of the balance money with SEBI, if any, the direction at para 24(f) above shall cease to operate within 15 days thereafter.
- (i) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 24(g) 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, jointly and severally, imposed with, under Section 15HB of the SEBI Act, 1992, a penalty of Rs.3,00,000/- (Rupees three lakh only) and further directed to pay the penalty within a period of forty-five (45) days, from the date of receipt of this order.
- (k) The Noticees shall remit / pay the said amount of penalties by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or 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 Chairman/ Members -> PAY NOW. In case of any difficulties in online

payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to “The Division Chief, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051” and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges alongwith order details)	

25. The direction for refund and depositing the balance amount with SEBI, as given in paras 24(a) and 24(e) 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.
26. This Order shall come into force with immediate effect.
27. A copy of this Order shall be sent to the Noticees, the recognized Stock Exchanges, Depositories, the relevant banks and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Place: Mumbai
Date: December 14, 2022

Sd/-
G P GARG
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA