

ED/SP/WRO/WRO/20471/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

FINAL ORDER

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

In respect of –

NOTICEE	PAN
SG Consultant (Proprietor: Umesh Chourasiya)	BNOPC1975Q

In the matter of Unregistered Investment Advisory Services by SG Consultant

1. A complaint dated December 28, 2019, against SG Consultant and its Proprietor Umesh Chourasiya (hereinafter collectively referred to as “**Noticee**”) was received by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), on January 1, 2020 and on January 17, 2020, from one Shri Narayan Prasad Bhararia (Complainant), wherein it was alleged that employees of SG Consultant would continuously call him over telephone and informed that they provide tips for huge profit. The employees of the Noticee also assured that the company has license from SEBI and will provide daily tips to earn minimum of Rs.30,000/- per day. The complainant thereafter deposited money in various tranches through the payment gateway available on the Noticee’s website. However, after a few deposits, the Noticee stopped attending the calls of the complainant.
2. Pursuant to receipt of the above mentioned complaint, SEBI had examined the matter and thereafter, had issued a Show Cause Notice dated July 31, 2021 (“**SCN**”), to the Noticee, *inter alia* alleging that the Noticee had carried out investment advisory activities without obtaining registration from SEBI in violation of the provisions of Section 12(1) of the SEBI Act, 1992 (“**SEBI Act, 1992**”) read with Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (“**IA Regulations, 2013**”).

3. The Noticee was called upon to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B(1) of the SEBI Act should not be issued /imposed against the Noticee for the violations alleged in the SCN.
4. The SCN which was issued through registered post, to the Noticee, at the address available on record, was duly acknowledged by the Noticee vide email of August 30, 2021. Pursuant to service of the SCN, an opportunity of personal hearing was granted to the Noticee on April 25, 2022 by the then quasi-judicial authority. The Noticee did not appear for the hearing, however, vide email dated April 22, 2022, the Noticee had provided his written submissions expressing his inability to attend the hearing and cited personal reasons for the same. Another opportunity of personal hearing was granted to the Noticee on June 30, 2022. However, the Noticee did not appear for the hearing and also did not file any letter or email seeking adjournment. Upon the matter being assigned to the undersigned, following the principles of natural justice, one last opportunity of personal hearing was granted to the Noticee on September 16, 2022. However, the Noticee did not appear for the hearing and also did not file any letter or email seeking adjournment. Thereafter, vide email dated September 19, 2022 the Noticee was given fifteen day's time to file further written submissions, if any. However, no further written submissions were provided by the Noticee within the said timeline or till date.
5. The Noticee vide his email dated April 22, 2022 has submitted his final written submissions and has *inter alia* submitted the following:
 - a) *With regards to the complaint mentioned in the SCN, I tried to connect with the complainant on behalf of the information provided in SCN because I did not have any idea about the complainant matter so was trying to collect and get the understanding of the matter as the office was shut down before 3.5 years. But, I could not proceed as I am restricted to do transaction due to account freeze.*

- b) *I have started SG Consultant after gaining knowledge of the market and doing a lot of research.*
- c) *I have never used “SEBI” word anywhere on any digital platform. The moment I came to know everything about the compliance requirements of SEBI, I decided to shut down the business as I was unaware about the compliance requirements of SEBI and started focusing on further studies and government competitive exams and appeared for several exams as well during this period.*
- d) *I am well educated belong to middle class family had no intention of violating the provisions of any laws and the alleged violations have occurred due to the unawareness of Regulations and lack of understanding about the applicable laws.*

Consideration of submissions and findings:

6. I have considered the allegations made in the SCN along with the reply/submission of the Noticee vide email dated April 22, 2022, and all the material available on record. The SCN has alleged that the Noticee 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. From the material available on record, as mentioned in the SCN, the following are observed:
 - i. Based on the information provided by the complainant, the website of the entity i.e. www.sginvesto.com was searched online and also on archives website: *archive.org.*, but there was no website with the name: www.sginvesto.com. However, the website: www.sginvesto.in was found and the email ID stated by the complainant i.e. *compliance@sginvesto.com* and *sales@sginvesto.com* were found on this website address. The website: www.sginvesto.in was found to be inactive when the examination was conducted by SEBI. Therefore, for the purpose of the examination, the archived pages of the aforesaid website were downloaded from the Archives website: *archive.org*. The following was observed from the said website:
 - a. It was observed that through its website, the Noticee had advertised itself as the pioneering financial advisory firm having a team of specialized financial market analysts having massive experience in carrying out

capital market research. It would deliver reliable tips and advices for stocks, future and options (F&O), commodities such as bullion, agri and metals traded in MCX and NCDEX. The website offered daily and weekly reports having stock and commodity market overview that assists the investors to identify with the trends of the market and assists in taking smart decisions. In its website, the Noticee claims to be India's leading financial advisory firm fully committed to make fair, holistic; top quality financial recommendations and tips accessible to all traders and investors in India. The financial advice offered in the website connects all factors of financial planning and assists traders in taking holistic and merit based financial decisions to acquire their financial objective. It claimed to have a fully committed team of business analysts that take full care of customers individually online and through telephonic support round the clock. The website *inter alia* was claiming to offer the following benefits to clients/customers:

“Benefits We Offer:

- *Keep in mind the special requirements, objectives and desires of the customers and their family.*
- *Analyzing the existing financial position, cash-flows and their prospective funding.*
- *Growing strategies which are most suitable and would generate the finest outcomes for the customers.*
- *Facilitate clients with a perfect financial investment plan.*
- *Suggesting exact solutions to be executed.”*

b. The website further advertised that:

“SGInvesto give financial advices to our clients with the help of SMS and LIVE Chat by using state-of-the-art technology for sending SMS for making sure that our advice reaches the client right away so that they have adequate time to enter into the trade and maximize their ROI. Our highly experienced and skilled research team comprises specialized market analysts that employ high-tech technologies and software to get

apt opportunities in the Indian financial market. Our analytical ability is our biggest strength and delivering excellent services to our clients are our top priority.”

- c. The website also provided a facility to give a miss call on +91-731-4979016 or register for a FREE TRIAL. The website also had the following contact details:

“Contact US: +91-731-4979016 Email;sales@sginvesto.com Call+91-731-4979016. For any Complaint please Mail on compliance@sginvesto.com.

- d. Further, as per the archive webpages of the website www.sginvesto.in, the Noticee offered various services which are *inter-alia* tabulated as under:

Sr. No.	Equity Service
1.	Stock
2.	Stock Future
3.	Nifty
4.	Option
5.	Stock Positional
6.	Future Positional
7.	BTST Cash
8.	BTST-STBT Future
	Commodity Services
9.	Bullion
10.	Bullion Positional

- ii. The complainant had provided details of the bank account number of the Noticee and on examination of the KYC, Account Opening form and account statement of the Noticee submitted by Axis Bank vide email dated January 20, 2020, the following was noted:
- (i) SG Consultant is the proprietorship firm and Umesh Chourasiya is the proprietor.
 - (ii) Multiple credit transactions were done through PayUMoney Payments Private Limited
 - (iii) PAN: BNOPC1975Q

- (iv) Aadhar: 890968962433
 - (v) Axis Bank Account No. 917020048848870, opened on June 21, 2017. Total amount credited in the said bank account from July 6, 2017 to May 27, 2019 is Rs.25,88,183.16.
 - (vi) The account opening form indicates 'Nature of Business' as 'Consultancy'.
- iii. Based on the transaction details in the bank account statement, the KYC details, account statement were sought from PayUMoney which was provided vide email on July 22, 2020. On analysis of the same, the following details were noted:
- a) Merchant Name: SG Consultant
 - b) Merchant ID: 316329
 - c) Linked Bank Account: Axis Bank: 917020048848870
- iv. Further, the payment tab of the archived webpage www.sginvesto.in leads to the PayUmoney gateway with the weblink:
"<http://web.archive.org/web/20180514111703/https://www.Payumoney.com/paybyPayumoney/#/316329>".
- v. The said link includes the PayUMoney merchant ID: 316329. This merchant ID: 316329 is linked with Axis Bank A/c No. 917020048848870. Hence, it is inferred that the Noticee's Axis Bank account bearing no. 917020048848870, was used for receipt of fees for the purpose of providing investment advisory services.
8. From the above, I note that the Noticee through its website www.sginvesto.in provided recommendations for trading in Indian Securities and commodity market. The Noticee claimed to offer stock trading tips and financial investment planning to clients. Its website mentioned different segments for which it provided the tips, which included Equity, Futures, Options and Commodity. It claimed to have highly experienced and skilled research team comprising specialized market analysts that employ high-tech technologies and software

to get apt opportunities in the Indian financial market. As per the website, the Noticee provided financial advice to their clients with the help of SMS and LIVE Chat by using state-of-the-art technology for sending SMS for making sure that their advice reaches the client right away so that they have adequate time to enter into the trade and maximize their return on investment.

9. The Noticee in his reply to the SCN has submitted that he started SG Consultant after gaining knowledge of the market and doing a lot of research. The Noticee has submitted that he has never used the word “SEBI” anywhere on any digital platform and the moment he came to know everything about compliance requirements of SEBI, he decided to shut down the business as he was unaware about the compliance requirements of SEBI. Further, that he had no intention of violating the provisions of any laws and the alleged violations have occurred due to the unawareness of Regulations and lack of understanding about the applicable laws. Hence, I note that the Noticee has neither denied nor contested the observations regarding the website or the contents advertised therein and the bank account details and transactions, which have been discussed in detailed at paragraph 7 above. Further, I note that the Noticee has not made any submissions disputing the allegations against him in the SCN.
10. From the aforesaid facts and submissions made by the Noticee, I find that the Noticee was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through the website, www.sginvesto.in 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 Noticee was providing

“investment advice” through the aforesaid website. As noted above, the Noticee received Rs.25,88,183.16 in the bank account linked to the payment link mentioned on their website for the investment advisory services provided by them. Hence, I find that these services were being offered by the Noticee *in lieu* of the consideration, as noted above. Therefore, I find that the Noticee was 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.

11. 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.”

12. 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 has 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.

13. 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.

14. The activities engaged in by the Noticee, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticee was holding itself out and was acting as an investment adviser, although the Noticee was not registered with SEBI in the capacity of an investment adviser. Hence, I find that these activities/representations as were being made by the Noticee 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.
15. 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 Noticee was not holding any certificate of registration from SEBI to act as an investment advisor.

16. The SCN had called upon the Noticee 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 per the material available on record, the amount of fees collected by the Noticee in the bank account, as a result of providing '*Investment Advice*' to investors, amounted to ₹25,88,183.16. I note that the Noticee has not made any submissions in terms of the said amount. In light of the findings in the preceding paragraphs, I am of the considered view that the Noticee is liable to refund the aforementioned amount to its clients /investors.

Directions:

17. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4) and 11B(1), read with of Section 19 of the SEBI Act, 1992, hereby direct that:
- (a) The Noticee 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 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 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 Noticee 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 Noticee. Thereafter, remaining amount, if any, will be deposited in the Investors Protection and Education Fund maintained by SEBI;
- (f) The Noticee is restrained 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/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 Noticee and depositing balance amount with SEBI, as directed in this order, from the bank accounts of the Noticee;
- (g) 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 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 17(a) and 17(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 17(f) above shall cease to operate within 15 days thereafter.
 - (i) The Noticee shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 17(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.
18. The direction for refund and depositing the balance amount with SEBI, as given in para 17(a) and 17(e) 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.
19. This Order shall come into force with immediate effect.
20. A copy of this Order shall be sent to the Noticee, 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.

Sd/-

Place: Mumbai
Date: October 19, 2022

SUJIT PRASAD
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA