

BEFORE SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(4) and 11B (1) OF SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992

In respect of:

| S .No. | Noticee's Name | PAN |
|--------|---|------------|
| 1 | Mr. Niraj Thakur, Proprietor of Empiric Trade | AXCPT3030A |

In the matter of Unregistered Investment Advisory by Mr. Niraj Thakur, Proprietor of Empiric Trade.

1. Securities and Exchange Board of India ("**SEBI**") conducted an examination into the affairs of Mr. Niraj Thakur, Proprietor of Empiric Trade and found that he was carrying out unregistered investment advisory activities. During the course of examination, vide a letter dated July 1, 2019 sent via post and email, Mr. Niraj Thakur was asked to submit, *inter alia*, details of activities being carried out by him. In reply to the letter, Mr Niraj Thakur, vide email dated July 18, 2019 admitted that he had started the proprietorship firm 5-6 months back and pleaded ignorance to the fact that registration under the applicable law was required to carry out such activities. He mentioned that he will be closing all his workings for now and will start after taking registration. He also submitted that he will be submitting all other documents, except registration certificate. However, no correspondence was received from him thereafter. Subsequently, a show cause notice dated September 9, 2021 (hereinafter referred to as "**the SCN**") was issued to Mr. Niraj Thakur (hereinafter referred to as "**Noticee**"), calling upon him to show cause as to why suitable directions including directions as to refund of fees collected, debarment, non-association with listed entities, intermediaries, etc. should not be issued against him under sections 11B(1) and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") for violations of section 12(1) of the SEBI Act read with regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 ("**IA Regulations**").

2. The SCN contained the following observations and allegations against the Noticee with regard to SEBI's examination of his activities.
- 2.1. It was alleged that the Noticee, through his website www.empirictrades.com has provided investment advice.
 - 2.2. From the archived copies of webpages, it was observed that Noticee has offered various packages for investment advisory. Various plans for investment advice packages ranging from ₹8,000 to ₹1,20,000 were available on the website. ICICI Bank account (a/c no. 005305500443) and Easebuzz payment gateway were used to receive the payments from the clients.
 - 2.3. As per the intermediary database available on SEBI website, the Noticee was not registered with SEBI in any capacity.
 - 2.4. As per the KYC documents of ICICI Bank, Noticee was the authorized signatory and the beneficiary of the bank accounts. As per the details submitted by Easebuzz also, Noticee was the beneficiary of the said account.
 - 2.5. There were multiple credits to the aforesaid ICICI bank account other than credits from Easebuzz with description like trading, trade advice, service charge, stock tips, bank nifty trade etc. 44 such direct bank account transactions were identified.
 - 2.6. A total of 389 credits (44 direct bank A/c transactions and 345 Easebuzz transactions) were made from different sources into the ICICI bank account since 17.01.2019 in connection with investment advisory and the total credit received in the aforesaid accounts from these 389 transactions was ₹83,70,635.54. The summary of transactions observed in the aforesaid accounts are tabulated as under:

| Account Number & Bank / Payment Gateway | Statement period | Total Credits (₹) | No. of Credit Transactions | Last Credit Transaction date | Closing Balance |
|---|-----------------------------|---------------------|----------------------------|------------------------------|-----------------|
| 005305500443 ICICI Bank | 17.01.2019 to 26.06.2019 | 9,48,500.00 * | 44 | 26.06.2019 | 0 |
| Easebuzz | 23.01.2019 to 16.07.2019 | 74,22,135.54 | 345 | 16.07.2019 | NA |
| Total | | 83,70,635.54 | 389 | | |

* The credit amount was less than ₹1000 were not included

- 2.7. It was observed from the numerous credit transactions that a large number of investors were affected by the unregistered activities carried out by the Noticee.
- 2.8. It was alleged on the basis of the above and other information collected during the examination viz., web pages, bank transaction, KYC submitted by ICICI bank, that the Noticee acted as an Investment Adviser by collecting fees from investors for advisory services without having a certificate of Registration from SEBI.
3. I note that SCN in the said matter was issued to the Noticee by SPAD at the address obtained from KYC details submitted by the Noticee to ICICI Bank, which, returned undelivered. The scanned copy of the SCN was also sent via email dated September 9, 2021 to the email id [empirictrade@gmail.com] from which the Noticee had made submissions to the queries of SEBI during the course of examination. A reminder email was sent on November 2, 2021, advising the entity to submit his reply to the SCN. Thereafter, a digitally signed reminder letter dated December 6, 2021 along with the scanned copy of the SCN dated September 9, 2021 was sent to the entity vide email dated December 6, 2021.
4. The Noticee was given 21 days' time to file his reply to the SCN from the date of receipt. However, no reply was filed by the Noticee. Thereafter, the Noticee was granted an opportunity of personal hearing on July 7, 2022, which was intimated to him vide hearing notice dated June 29, 2022 (delivered to him on his email ID). The Noticee did not appear for hearing.
5. Subsequently, another opportunity of personal hearing was granted to the Noticee on September 22, 2022 and a hearing notice in respect thereof was served to him through his e-mail id on September 13, 2022. The Noticee again failed to appear.
6. The Noticee has neither filed any reply nor appeared for hearing. Hence, it is presumed that Noticee has nothing to submit in respect of the allegations levelled in the SCN. Therefore, I am constrained to proceed further in the matter *ex-parte*, on the basis of material available on record.

7. From the material available on record including copies of the screenshots of the archived webpages of the website “https://www.empirictrades.com”, it was noted that the Noticee had made the following claims:

- a) *Every individual's reason to invest and trade is unique. No matter the skill level, we provide the complete investment plans for traders and investors.*
- b) *Empiric trades stand on only for providing accurate and timely services to the clients, on the side of the profit.*
- c) *Empiric trades advisors listen your investment plan and mould it in a way that revenue graph speeds up at its peak.*
- d) *The research analyst panel in the company is in continuous touch of the market and is to deliver the best trading levels for clients. The experts analyze the charts and figures for providing the best research levels. We provide Equity Cash, Commodity, NCDEX Tips and Derivative Tips.*
- e) *If you want to get the best calls in Nifty Future Market, you have dropped yourself at the right place. Tracking the high volatility in the index future market, we give 1 or 2 calls daily where the reward ratio is equivalent to risk involved.*
- f) *Premium services is having such type of calls which are having their first target double of the basic calls, the calls are prepared with technical analysis, premium given in all the segments of the market equities, commodity, agri and currency.*
- g) *The payment gateway - Easebuzz*
- h) *Bank details: Empiric Trade, a/c no.005305500443, IFSC code- ICIC0000053, Branch-Jayanagar, Bangalore.*
- i) *The pricing of various investment advice packages is given below:*

| S. No. | Package | Monthly Fee in ₹ | Quarterly Fee in ₹ | Half Yearly Fee in ₹ | Yearly Fee in ₹ |
|--------|---------------------------|------------------|--------------------|----------------------|-----------------|
| 1 | Nifty / Bank Nifty Future | 8000 | 20000 | 38000 | 70000 |
| 2 | Equity Cash | 8000 | 20000 | 38000 | 70000 |
| 3 | Equity Future | 8000 | 20000 | 38000 | 70000 |
| 4 | Option | 8000 | 20000 | 38000 | 70000 |
| 5 | Commodity | 8000 | 20000 | 38000 | 70000 |
| 6 | Agri | 8000 | 20000 | 38000 | 70000 |
| 7 | Currency | 8000 | 20000 | 38000 | 70000 |
| 8 | Premium Services | 30000 | 75000 | - | - |
| 9 | HNI Services | 50000 | 120000 | - | - |

- j) *The contact details: 9632489044 / 7259151911 and email:empirictrade@gmail.com*

8. The aforesaid claims made by the Noticee clearly demonstrate that Noticee has been holding himself out as an investment advisor and has been offering his investment advisory services for a fees. From the archives of webpages, I find that the Noticee used to charge fees for his advisory services ranging from ₹8,000 to ₹ 1, 20,000.

9. The bank account no. mentioned on the website of the Noticee was ICICI Bank Account No.- 005305500443. From the relevant credit transactions observed in ICICI Bank A/c., I find that a total of 389 credits (44 direct bank A/c transactions and 345 Easebuzz transactions) were made from different sources into the ICICI bank account in connection with investment advisory since January 17, 2019 and the total credit received in the aforesaid account from such 389 transactions were ₹83,70,635.54.
10. From the aforesaid facts, I find that the Noticee was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products in lieu of consideration. Therefore, I find that in terms of regulation 2(1)(l) of the IA Regulations, the Noticee was providing “investment advice”. 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, are covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations. As noted above, the Noticee used to charge fee for investment advisory services ranging from ₹8,000 to ₹1,20,000 and received ₹83,70,635.54/- in connection with investment advisory activities in the ICICI bank account mentioned on his website. The Noticee has not made any submissions to prove that these funds were earned from other source of income. Hence, I find that these services were being offered by the Noticee for the consideration, as noted above. Therefore, I find that the Noticee was engaged in the business of providing investment advice to his clients, for consideration, and thus, acting as an investment adviser, as defined under regulation 2(1)(m) of the IA Regulations.
11. It is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct his activities in accordance with the provisions of SEBI Act and Regulations framed thereunder.

12. 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:

- 12.1. 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;
- 12.2. 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:
 - 12.2.1. 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;
 - 12.2.2. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
 - 12.2.3. 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.
- 12.3. 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.

13. I note that safeguards provided under IA Regulations require continued minimum professional qualification and net worth requirement for investment adviser, including disclosure of all conflicts 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 interest.

14. Section 12(1) of the SEBI Act provides as under:

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.

15. 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”.

16. It is noted that the Noticee was not registered with SEBI in the capacity of Investment Advisor. Hence, I find that the activities discussed hereinabove were being carried out by the Noticee without holding the certificate of registration as an investment adviser and are in violation of section 12(1) of SEBI Act read with regulation 3(1) of the IA Regulations.

17. As observed earlier, I note that the Noticee has collected ₹ 83, 70,635.54/- in the bank account mentioned on his website.

Directions:

18. In view of the foregoing, I, in exercise of the powers conferred upon me in terms sections 11(4) and 11B(1) read with of section 19 of the SEBI Act, hereby direct that:

- 18.1. The Noticee shall refund all the money collected/ received from any investors/ complainants, as fees or consideration or in any other form, in respect of his unregistered investment advisory activities immediately, and in any case within a period of three months from the date of this order,
- 18.2. The Noticee shall issue public notice in all editions of two National Newspapers (one English and one Hindi) and in one local newspaper in vernacular language with wide circulation, detailing the modalities for refund, including the details of contact person such as name, addresses and contact details, within 15 days of this order;
- 18.3. The repayments to the investors shall be effected only through bank transfers with audit trails to identify the beneficiaries of repayments;
- 18.4. The Noticee is prohibited from selling his assets, properties and holdings 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 from the bank accounts of the Noticee, only for the purpose of making refunds to the investors/ complainants who were availing the investment advisory services from the Noticee;
- 18.5. 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 18.1 above, duly certified by an independent Chartered Accountant and the direction at para 18.4 above shall cease to operate upon completion of refunds to complainants/ investors, to the satisfaction of SEBI;
- 18.6. The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the

securities, directly or indirectly in any manner whatsoever, for a period of one year from the date of this order or till the expiry of six months from the date of completion of refunds to investors as directed in para 18.1 above, whichever is later;

18.7. The Noticee shall not undertake, either during, or after, the expiry of the period of debarment /restraint as mentioned in para 18.6 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.

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

20. It is clarified that the direction for refund, as given in para 18.1 above, does not preclude the clients /investors to pursue 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.

21. This order comes into force with immediate effect.

22. A copy of this order shall be sent to the Noticee, all the recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Date: October 17, 2022

Place: Mumbai

Sd/-

MANOJ KUMAR

EXECUTIVE DIRECTOR

SECURITIES AND EXCHANGE BOARD OF INDIA