

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTIONS 11(1), 11(4), 11(B)(1), 11(4A) AND 11(B)(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 3(1) OF THE SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013 AND UNDER SECTION 15-I OF THE SEBI ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

Noticee No.	Name of the Noticee(s)	PAN
1.	M/s. SK Sales	ADTFS4891H
2.	Sandeep Subhashbhai Borse	APWPB6279B
3.	Kalyani Sandeep Borse	DCXPS4051K

(The aforesaid entities are hereinafter individually referred to by their respective names or Noticee Number and collectively as the “the Noticees”

In the matter of Unregistered Investment Advisory Services by M/s.SK Sales and its partners

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”), had received a complaint against ‘<http://Stockkhoj.com>’ (**Stockkhoj/website**) from a complainant, wherein it was *inter alia* alleged by the complainant that he had availed the investment advisory services being offered on the website. It was further alleged that the complainant had made a payment of Rs.40,000/- through the payment gateway Easebuzz, as registration charges. Consequent to the payment of the said charges, the complainant sought for the SEBI registration

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certificate, but the same was not provided to him. On examination, SEBI observed that the website with a domain name www.stockkhoj.com was being operated by the Noticees. One of the documents attached to the complaint filed by the complainant contained the invoice which bore the name of SK Sales (**Noticee 1**). On examination of the documents which were provided by Easebuzz w.r.t Stockkhoj, it was observed that the bank account was in the name of SK Sales which is a partnership firm with Sandeep Subhashbhai Borse (**Noticee 2**) and Kalyani Sandeep Borse (**Noticee 3**) who were the partners in the firm.

2. Further examination revealed that neither Stockkhoj nor SK Sales are registered with SEBI in any capacity. However, Noticee 2 who is one of the partners in SK Sales is registered with SEBI as an Investment Adviser (**IA**) in his individual capacity with Registration No. INA000013952 w.e.f September 16, 2019.
3. It was prima facie observed that Noticee 2 and Noticee 3 through SK Sales which is a partnership firm, floated a website <http://stockkhoj.com> and were providing investment advice to clients for consideration without obtaining registration from SEBI as IAs, thereby violating Section 12 (1) of the SEBI Act, 1992 read with Regulation 3 (1) of the SEBI (Investment Advisers) Regulations, 2013 (**IA Regulations**).

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated 21.11.2022 (hereinafter referred to as “**SCN**”) was issued to the Noticees calling upon them to show cause as to why suitable directions under Sections 11(4) and 11B (1) read with Section 11(1) of the SEBI Act, 1992 including direction of refund of fees/monies collected from the investors, should not be issued against the Noticees for the alleged violations. The Noticees were also called upon to show cause as to why inquiry should not be held against

them in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon the Noticees under Section 11(4A), 11B(2) read with Section 15HB and Section 15EB of SEBI Act, 1992. The following documents were enclosed as annexures to the SCN:-

Table A

Annexures to SCN	
Annex. No.	Particulars
A	Copy of the complaint received.
B	Copy of downloaded web pages of http://stockkhoj.com
C	Copies of Account Opening Forms (AOF), Know Your Customers/Clients (KYC) documents and bank account statements received from HDFC Bank and ICICI Bank.
D	Copy of SEBI letter and email dated 17.03.2022 to SK Sales seeking various information of the firm.

5. The SCN has *inter alia* alleged the following:-

- (a) SEBI received a complaint against *stockkhoj.com* from a complainant, wherein it was *inter alia* alleged by the complainant that he had availed the investment advisory services being offered by the website. It was further alleged in the complaint that a payment of Rs.40,000 was made by the complainant as registration charges. Consequent to the payment of the said charges, the complainant sought SEBI registration certificate, but the same was not provided by Stockkhoj. The complainant sent multiple emails and made many phone calls none of which was replied to.
- (b) Based on the complaint, an examination was conducted wherein it was noted that a website with the domain name www.stockkhoj.com was being operated by the noticees. One of the documents attached to the complaint contained the invoice which bore the name of SK Sales.
- (c) The website i.e. <http://stockkhoj.com> was not active during examination. Based on the webpages of the said website which were downloaded from www.archive.org it was observed that the narrative mentioned that Stockkhoj was providing trading tips on the Indian Stock Market and also contained the pricing chart for its various products / services. Hence, the website <http://stockkhoj.com> which belonged to SK Sales was providing investment advisory services.

- (d) On an analysis of the AOFs and KYC details received from HDFC Bank, it was noted that SK Sales was a partnership firm formed by way of Deed of Partnership dated 15.09.2018 with Sandeep Subhashbhai Borse and Kalyani Sandeep Borse as partners.
- (e) On an examination of the bank statement of SK Sales with Account No. 502xxxxxxx098 with HDFC Bank which was linked to the payment gateway Easebuzz it was noted that the bank account was opened on 09.10.2018. There was a total credit of Rs.2,34,42,789.49. As on 18.02.2022 the closing balance in the account was found to be zero. The last credit entry in the account was on 03.07.2020. The status of the bank account was 'Regular' as on 17.02.2022.
- (f) On an examination of the bank statement of SK Sales with Account No.187xxxxxx601 with ICICI Bank was opened on 24.10.2018. There was a total credit of Rs.1,63,59,543.70. As on 26.08.2021, the closing balance was Rs.51,145.20 and the last credit entry in the account was on 16.03.2020. ICICI Bank has informed that as on 29.09.2021 the account status is 'Open'.
- (g) The account statements of both HDFC Bank and ICICI Bank contained various credit entries with the terms "broking", "consultancy", "investment", "share", "fees" "trade", "advisory tips" etc.
- (h) All credit entries after opening of bank accounts in HDFC Bank and ICICI Bank i.e.a total amount of Rs.3,98,02,342.19 are being considered as monies received for the unregistered IA services. It was inferred that these bank accounts were being used for receipt of fees from various entities for the purpose of providing investment advisory services.
- (i) SEBI had sent a letter and email dated 17.03.2022 to SK Sales seeking the details w.r.t the investment advisory services of the firm, list of clients, fees charged for various products, all the bank accounts maintained, audited annual account statements, bank account statements etc. However, no reply was received and hence the total amount was alleged to be payment received for providing the investment advisory services.
- (j) It was further seen that Sandeep Subhashbhai Borse who is one of the partners of SK Sales is registered as an Investment Adviser with SEBI in his individual capacity w.e.f 16.09.2019. However, the partnership firm, SK Sales is not registered with SEBI in any capacity. For providing investment advisory services, SK Sales ought to have obtained registration as a non-individual investment adviser.
- (k) In view of the alleged violations of provisions of securities laws as brought out in the above paragraphs, Noticees were called upon to show cause as to why suitable directions including refund of fees collected and penalty should not be

imposed against the Noticees under sections 11(1), 11(4), 11B(1), 11(4A) and 11 B (2) of SEBI Act, 1992 read with Section 15 EB and 15 HB of SEBI Act, 1992.

6. The SCN, therefore, alleged that the Noticees were providing investment advisory services to their clients for consideration without obtaining a certificate of registration from SEBI, in contravention of the alleged provisions as mentioned in Para 3 above.
7. The SCN dated 21.11.2022 was sent to all the three Noticees by Speed Post with Acknowledgment Due (SPAD). While the SCN was delivered to Noticees 2 and 3, the SCN issued to Noticee 1 was returned undelivered. The attempt for affixture w.r.t Noticee 1 was unsuccessful. Thereafter, the updated address of the firm was sought from Noticee 1. Vide letter dated 13.01.2023, the SCN was sent to Noticee 1 at the address given, however, the same returned undelivered. Thereafter on 03.02.2023, a scanned copy of the SCN was emailed to Noticee 2.
8. Noticees 1 and 3 sent a common reply to the SCN vide unsigned letter dated 06.02.2023. Noticee 2 sent his reply vide unsigned letter dated 07.02.2023. The replies received from the Noticees 1 and 3 and Noticee 2 are summarized as follows:-

Reply received from Noticees 1 and 3

- 8.1 Noticees stated that nothing contained in the reply should be deemed to be admitted unless the same has been expressly admitted.
- 8.2 Noticee started the business in tax advisory in the name of SK Sales. The objective of the firm can be verified from account opening form of the bank which clearly states business of tax consultancy.
- 8.3 SK Sales was formed as a partnership between the noticee and her husband as advised by the Chartered Accountant.
- 8.4 Her husband had no role in SK Sales and he was just appointed as a partner to form the partnership.
- 8.5 Noticee has not been involved in any kind of unregistered investment advisory activities.

- 8.6 The object of SK Sales was tax advisory, educational services in share market for trading and investment in equity, options, futures and commodity market and other consultancy services.
- 8.7 Regarding the complaint, the complainant clearly stated that he was not offered any investment advice and was not provided the details of the SEBI registration number as the Noticee could not finalise with any registered intermediary to provide the investment advisory services.
- 8.8 The noticee missed to refund the amount to the complainant and also the Noticee did not receive any call /emails from complainant seeking for refund.
- 8.9 The website stockkhoj.com was just a platform for the investors and intermediaries wherein the role of SK Sales was just restricted to helping the investors in getting the right recommendation / advice the Stockkhoj platform from the registered market intermediaries.
- 8.10 The content of the said website was just a marketing material to attract new clients for providing education and consultation through the registered intermediaries.
- 8.11 The website has nowhere mentioned or claimed that they provide investment advice, the investment advice was always meant to be provided through the registered intermediaries only.
- 8.12 Regarding the fees table on the website, it was uniform subscription charges to be charged from the investors when they register on their platform. The said fees were not charged by the Noticee, it was the proposed platform fee which could not be finalized.
- 8.13 The allegation of receiving the amount of Rs.3,98,02,342.19 as monies for unregistered investment advisory activities is completely false and baseless as the noticee has never provided any investment advice and instead has provided educational, taxation and consultation services.
- 8.14 The firm SK Sales did not receive any complaint apart from the complainant which proves that the firm was not doing any unethical or fraudulent activity.
- 8.15 From the narrations of the transactions from the bank statements of SK Sales it is evident that the firm has earned their revenue from tax advisory / consultancy services.

- 8.16 Further, nowhere from the show cause and its annexures it is evident / established that the Noticee was involved in unregistered advisory activities, so accusing the noticee merely on basis of a single complaint which also clearly states that he was not offered any advisory services is baseless.
- 8.17 The Noticee has made a reference to the Order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Ms. Suhanika Chourey*, wherein the violations were set aside as there was no evidence brought on record. Further, the reference to SEBI's order in the matter of *Star World Research*, was also made by the noticee wherein it was held that if there are no absolute / conclusive evidence then the violations / allegations cannot be established.
- 8.18 The Noticee has not received any letter / email from SEBI seeking details of the activities of SK Sales or else it could have reverted on it.

Reply received from Noticee 2

- 8.19 Noticee stated that nothing contained in his reply should be deemed to be admitted unless the same has been expressly admitted.
- 8.20 The Noticee is a SEBI registered IA in an individual capacity.
- 8.21 The Noticee has not ever been involved in any kind of unregistered investment advisory activities.
- 8.22 The firm SK Sales was formed by the Noticee's wife with an objective of providing taxation and other consultancy services. The noticee's wife had planned to start the firm in the partnership form and hence the Noticee entered into partnership with just a stake of 1% as is evident in partnership deed.
- 8.23 Merely by virtue of being named a partner, that too for just 1% once cannot be alleged to have carried out acts on behalf of the firm when one has not actually committed or done any activity.
- 8.24 Being a partner for just 1% stake he cannot be held liable for any alleged violations of law committed by the firm. Noticee has placed reliance on decision of Hon'ble Supreme Court in the case of *Sham Sunder v.State of Haryana(1989) 4 SCC 630*. It was held that there may be partners who do

- not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners.
- 8.25 Noticee had no role in the activities of SK Sales as he entered into partnership just for the sake of forming a partnership firm.
- 8.26 The objective of the firm from the AOF of the bank clearly states the business of tax consultancy.
- 8.27 The website Stockkhoy was launched with a motive to create a platform for investors and registered market intermediaries wherein role of SK Sales was just restricted to helping the investors in getting the right recommendation / advice through the platform.
- 8.28 The firm was also providing education services in the financial markets alongwith their tax advisory and other consultancy services.
- 8.29 Neither the firm nor its partners were involved in providing advice / recommendations to the investors in any manner.
- 8.30 With reference to the complaint, the complainant has clearly stated that he was not offered any investment advice and not provided the SEBI registration number.
- 8.31 The firm did not receive any complaint apart from the complainant which does prove that the firm was not doing any unethical or fraudulent activity.
- 8.32 Since the firm was facing difficulties in reaching upon a conclusion between the investors and the registered intermediaries, the noticee's wife (who was controlling the operations of the firm) suggested the noticee to take SEBI registration.
- 8.33 The noticee has not offered any investment advisory services to the investors prior to obtaining the registration from SEBI.
- 8.34 Noticee applied for registration as IA in April 2019 and got the registration in September 2019.
- 8.35 The noticee while applying for the registration had declared that" he was not involved in investment advisory services prior to making the said application" which is true as he was not involved in offering any investment advice.
- 8.36 The noticee has not hidden any unregistered IA activity from SEBI as he was not involved in any unregistered IA activity.

- 8.37 It is evident from the narrations of the transactions from the bank statements of the firm that it has earned revenue from tax advisory/ consultancy services.
- 8.38 Noticee started his operations as an IA only after obtaining registration from SEBI.
- 8.39 Nowhere in the show cause notice and its annexures it is evident / established that the noticee was involved in unregistered IA activities.
- 8.40 The noticee had not received any letter /email from SEBI seeking details of the activities of SK Sales or else he would have reverted upon that.
9. An opportunity of personal hearing was granted to the noticees before the competent authority on 01.03.2023 in the interest of natural justice. On the scheduled date, Noticee 2 alongwith Mr. Abhishek Mishra who was the authorized representative (AR) for the noticees attended the hearing in person and reiterated the earlier submissions made by the notices vide their letters dated 06.02.2023 and 07.02.2023. During the hearing, *inter alia*, the AR relied on the decision of the *Hon'ble Supreme Court in Sham Sunder v. State of Haryana, (1989) 4 SCC 630* and stated that being a partner for just 1% stake, Noticee 2 cannot be held liable for any alleged violation of law committed by the firm. The AR also referred to the SEBI order in the matter of *Star World Research*, wherein it was held that if there are no absolute / conclusive evidence then the violations / allegations cannot be established. The AR submitted that the total amount for credits in HDFC and ICICI Bank account statement should not be taken into consideration which is double counting as these are internal transfers between these two accounts. The AR also submitted that the noticees wanted to file their settlement application.
10. Thereafter, vide record of proceedings dated 02.03.2023, the noticees were advised, *inter alia*, to provide evidence in support of their claim and were advised to provide the break-up of credits received in HDFC Bank and ICICI Bank, including the names from whom credits were received and purposes for which these credits

were made. The noticees were also advised to submit copy of the income tax returns of the partnership firm since its beginning, invoices issued to the clients, proof of documents related to the education services alongwith the tax advisory consultancy and other consultancy services. The noticees were granted time till 08.03.2023 to provide the requisite documents and additional submissions, if any.

11. The noticees sent a combined reply vide letter dated 08.03.2023 with the following:-

- 11.1 The noticees once again reiterated that the revenue generated by the firm was from educational and taxation consultancy and not from advisory as barely 2-3 clients have paid fees for the advisory through the platform.
- 11.2 They enclosed copies of the ITRs, sample of few invoices of the firm to demonstrate their return filing /training on taxation services and also the total figures of the interse transfer of funds between HDFC Bank and ICICI Bank.
- 11.3 Noticees have also relied on the judgement passed by Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Shri Pushpendra Bhalse versus SEBI*, wherein noticees have stated that *it was held that SEBI cannot unseeingly assume all the credit entries of a bank account as the entries for revenue and SEBI has to verify the veracity of the transactions.*
- 11.4 With regard to documentary evidence for the education and tax advisory services provided by the firm, the noticees have stated "*....educational and tax advisory services provided by the firm were of the nature of consultation of which no records could be maintained by the firm as the education / training for trading and investing in stock market was provided in the live market and hence as result of which the noticees are unable to provide any such proof. Further, few of the clients of the firm will provide a written confirmation that no such advisory services were offered to them, which the*

Noticees will share it with the SEBI as soon as they will receive the same from the clients.”

11.5 The noticees once again informed that they would file the settlement application in this matter by 09.03.2023.

I note that the noticees have not provided the break up of credit details including names from whom the funds were received alongwith the purpose for which these were received.

12. As the noticees had filed the settlement application, the present proceeding was kept in abeyance. The Settlement Application of the Noticee was, however rejected and the same was conveyed to the noticees vide letter dated October 13, 2023.

13. In light of rejection of settlement application, noticees were once again vide email dated 01.11.2023 given an opportunity to provide updation of any relevant developments post the hearing which the noticees would like to submit. Noticees were also once again also requested to provide documentary evidence related to the educational services and tax advisory consultancy and other consultancy services as well as clear break-up of the credits received in the HDFC Bank and ICICI Bank accounts including the names from whom the credits were received and the purposes for these credits, which was earlier sought vide record of proceedings dated 02.03.2023. They were provided time till 08.11.2023 to make their submissions.

14. However, on 08.11.2023, Noticee 2 while seeking additional time of 3 weeks to make the submissions, stated “....we are in the midst of bifurcating the revenue received from education and tax advisory alongwith the details of refunds made. Since, there are numerous transactions and also the matter is old, so it is taking

time. Moreover, we are also approaching the clients who have paid us for our services for obtaining undertaking from them....”

15. Based on their request, the noticees were granted additional time until 17.11.2023 to reply. However, no reply has been received from them.

CONSIDERATION OF ISSUES AND FINDINGS

16. I have considered the allegations made against the Noticees in the SCN, documents available on record, the written submissions of the Noticees, as well as oral submissions made by the AR and the Noticee 2 during the hearing.

17. Before proceeding further, I note that the allegation is w.r.t unregistered investment advisory activities made by the partnership firm i.e. SK Sales and its partners i.e. Sandeep Subhashbhai Borse and Kalyani Subhash Borse.

18. The issue that arises for consideration in the present proceeding is whether the Noticees were providing investment advisory services without obtaining a certificate of registration from SEBI in violation of Section 12 (1) of the SEBI Act, 1992 read with Regulation 3 (1) of the IA Regulations, 2013. I note that the definition of “Investment Adviser” as given under Regulation 2(1)(m) of the IA Regulations is relevant:-

“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;”

19. Further, Regulation 2(1)(l) of the IA Regulations defines “investment advice” as under:

“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;”

20. For ease of reference, the provisions of the SEBI Act, 1992 and the IA Regulations alleged to have been violated by the Noticees are reproduced hereunder:

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 ⁵³[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.”

21. SEBI received a complaint against “stockkhoj.com”, wherein it was alleged by the complainant that he had availed investment advisory services being offered on the said website. It was further alleged in the complaint that the complainant had made a payment of Rs.40,000/- as registration charges. It was mentioned that when the details of registration certificate was sought consequent to the payment of the said charges, the details were not provided by Stockkhoj.

22. Based on the complaint, SEBI observed there was a website with the domain name www.stockkhoj.com. In one of the documents submitted by the complainant, there was, *inter alia*, a copy of the invoice (Invoice No.SK/18-19/0150) which bore the names SK Sales, Stockkhoj and the website www.stockkhoj.com. It was further observed that neither the partnership firm ie.SK Sales nor Stockkhoj is registered

with SEBI in any capacity. However, one of the partners of SK Sales i.e Sandeep Subhashbhai Borse is registered as an IA with registration No. INA000013952. It was observed that SK Sales is a partnership firm formed by Noticee 2 and his wife i.e. Noticee 3. Thus Stockkhoj is connected to SK Sales. These facts have not been disputed by the noticees.

23.I note the following from the archived pages of the website (as the website i.e <http://stockkhoj.com> was not active during the examination):-

“Your Trading Solution Since 2015

Stockkhoj provides you Trading Tips about the Indian stock market with intense analysis done by their team of Analysts. We have been providing valuable Stock Tips to our clients through various methods. We have a team of Chart readers – technical analysts who tracks the market from its pre-opening to closing of the Market. Our team minutely observes every small movement in the market second to second.’.”

The website also states that it provides investors ‘Trading Tips’ about the Indian stock market with intense analysis done by their team of analysts. The noticee offered stock tips on equity, commodity and index. They have 2200 + clients. The website stated the pricing of the products based on the duration of subscription which ranged from Rs.29,000/- p.m. to Rs.2,65,000/- per year. The pricing chart of the various products / services under “*Our Pricing*” is reproduced hereunder:-

Category	Monthly	Quarterly	Half Yearly	Yearly
<i>Golden Marchent Clients</i>	₹ 118000	₹ 180000	₹ 300000	₹ 400000
<i>Stock Cash</i>	₹ 29000	₹ 72000	₹ 141000	₹ 210000
<i>Stock Future</i>	₹ 59000	₹ 118000	₹ 185000	₹ 265000
<i>Stock Option</i>	₹ 35000	₹ 85000	₹ 160000	₹ 250000
<i>Index Future</i>	₹ 35000	₹ 85000	₹ 160000	₹ 250000
<i>Index Option</i>	₹ 40000	₹ 95000	₹ 170000	₹ 265000

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24. I further also note the following which was appearing on the website:-

“Equity : In stock cash tips we provide our clients accurate and timely intraday best stock tips which drive them to make maximum profit from the equity market. Calls are given for NSE Stock Cash Traders. We give the calls through SMS system which ensure instant delivery of calls so that you get enough time to enter the trade and make maximum profit.”

Commodity : Premium Stock Tips is especially designed for those traders who trade full time in stock cash, stock futures and Nifty future. Premium Stock Tips consists of Stock Cash Calls, Stock Futures & Nifty Futures calls. You would experience an excellence in this service and can feel the difference in our Customer service. In spite of many number of calls given to you the quality and accuracy of the calls will remain the same.

Index : Nifty Futures Tips is especially designed for those traders who trade in index futures. In Nifty Futures Tips we provide our client best Nifty Future and Bank Nifty future calls along with the important support & resistance levels. In this pack we provide Nifty Future for current month.”

I further note that there is a link i.e. 'easebuzz.in/pay/stockkhoj', wherein the customer / client is required to give his or her details such as name, email ID, phone number, amount, the purpose of payment is pre-filled as “Consulting”.

25. As the complainant had stated that he had made a payment of Rs.40,000/- through the payment gateway i.e. Easebuzz in order to avail the investment advisory services, details were sought from the payment gateway. Accordingly, the following information has been submitted by Easebuzz :-

<i>Bank Name</i>	<i>HDFC Bank</i>
<i>Name</i>	<i>Stockkhoj</i>
<i>Email</i>	<i>talk@stockkhoj.com</i>
<i>Contact Number</i>	<i>9978607716</i>

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<i>Bank Name</i>	<i>HDFC Bank</i>
<i>Branch Name</i>	<i>Mumbai – Kalyan Mumbai</i>
<i>Bank Account Name</i>	<i>SK Sales</i>
<i>IFSC Code</i>	<i>HDFC0000194</i>
<i>Account No.</i>	<i>502xxxxxxxxx098</i>
<i>PAN ID</i>	<i>ADTFS4891H</i>

26. Based on the bank account details provided by Easebuzz , the AOFs, KYC details and the bank account statements were sought from HDFC Bank and other banks. From the documents on record, I note that SK Sales had its account with HDFC Bank (Account No. 502xxxxxxxxx098) as well as with ICICI Bank (Account No. 187xxxxxx601).

27. From the examination of the bank statements the following is observed:-

Bank Name & Account No.	HDFC Bank Account No.502xxxxxxxxx098	ICICI Bank Account No. 187xxxxxx601
Name of the Account Holder	SK Sales	SK Sales
Account Opening Date	09.10.2018	24.10.2018
Last Credit	03.07.2020	16.03.2020
Account Status	‘Regular’ as on 17.02.2022.	‘Open’ as on 29.09.2021
Account Balance	Nil as on 18.02.2022	Rs.51,145.20 as on 26.08.2021
Total Credits (Rs.)	Rs.2,34,42,798.49	Rs.1,63,59,543.70

28. On an analysis of the bank statement of HDFC Bank, it is observed that there are many credit entries in these bank statements with the narratives as “consultancy”, “broking charges”, “shares”, “Fees”, “registration for tips”, “Trade”, “Advise”, “investment”, “consultation”, “advisory”, “option fees”, “tips providing”. A sample of such credits is reproduced hereinbelow:-

Date	Narration	Credit Amount (Rs.)	Closing Balance (Rs.)
22/10/18	00301050017179-TPT-BROKING CHARGES	10,000	143,542.02
22/10/18	02351530012871-TPT-CONSLTNCY	2,000	145,542.02
24/10/18	IMPS-829713556962-M SURESH,S KARTHIKA-HDFC-XXXXXXXXX0366-INVESTMENT	10,000	806,652.07
24/10/18	05771130000136 -TPT-FR SHARE	10,500	817,152.07
05/11/18	IMPS-830915703140-SURESH KUMAR T-HDFC-XXXXXXXXXXXXX3442-SHARE	5,000	2,402,968.85
06/11/18	01141930000742-TPT-FEES	10,008	2,453,497.45
08/11/18	01221270000747-TPT-REGISTRAION FOR TIPS	5,000	2,381,414.45
12/11/18	01141930000742-TPT-FEES	6,000	249,713.41
17/11/18	IMPS-832114106084-SOWMYA LATHA R-HDFC-XXXXXXXXXXXXX4250-TRADE	25,000	522,922.61
10/12/18	IMPS-834417130820-SOWMYA LATHA R-HDFC-XXXXXXXXXXXXX4250-TRADE	25,000	236,781.02
04/01/19	UPI-374601000002707-SUBRAJKAR@OKAXIS-900411004629-ADVISE	5,000	49,690.08
24/01/19	05141000016001 -TPT-INVESTMENT	25,001	411,544.64
25/01/19	01031930000240-TPT-CONSULTATION	3,000	331,325.24
11/04/19	IMPS-910117303654-SHIVAKUMARP-HDFC-XXXXXXXXXXXXX6142-CONSULTANCY	25,000	264,795.04

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Date	Narration	Credit Amount (Rs.)	Closing Balance (Rs.)
13/04/19	IMPS-910318936101-MRINMOY MUKHERJEE-HDFC-XXXXXX8817-TOWARDS INVESTMENTS	500	309,233.04
22/04/19	01411000056529-TPT-ADVISORY	10,000	106,125.20
24/04/19	01411000056529-TPT-CONSULTANCY	15,000	138,548.50
17/05/19	05091610084236 -TPT-TRADEPURPOSE	20,000	1,211,447.34
03/06/19	UPI-SURESH KUMAR SO SHRI-SURESHKUMAR41200@OKICICI-CORP0003257-915409578625-INVESTM	5,000	1,178,603.30
29/05/19	IMPS-914920256614-SHIBU JAMES-HDFC-XXXXXXXXXXXX3619-TRADE	11,500	982,673.12
19/08/19	00151050070460-TPT-JITESH OPTION FEES	6,000	972,528.27
16/09/19	IMPS-925915309643-MR. BAJAJ SUBHASH LA-HDFC-XXXXXXXX1456-SHARES	7,500	2,082,249.24
21/09/19	UPI-SHRUTHI SHILPA LALAM-SHRUTILLALAM18@OKHDFCBANK-HDFC0000486-926416444185-FEES TO SINHA	30,000	1,214,482.99
23/09/19	UPI-SHRUTHI SHILPA LALAM-SHRUTILLALAM18@OKHDFCBANK-HDFC0000486-926608029709-FEES TO SINHA	28,000	1,242,482.99
08/11/19	UPI-SHAILESH KUMAR-SLOHANI211977@OKHDFCBANK-BKID0004407-931215871935-TIPS PROVIDING	5,000	945,372.98
15/11/19	IMPS-931909155244-RATHEESH R-HDFC-XXXXXXXXXXXX5121-SHARE	12,500	1,029,066.30
28/11/19	00111050009589-TPT-CONSULTANCY-LAL CHAND SHARMA	25,000	514,425.08

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29. I note that similar narratives are also observed from the account statement of ICICI Bank wherein there are several credit transactions with narratives such as “Investment”, Trading advisory “, “advisory”, “tips”, “one month fee”, “trade”, “consultancy fee”, “shares purchase”, “Stock Guidance”, “advisory fees”, “share advice” etc are written against such credit entries. A sample of such credits is reproduced hereinbelow:-

Date	Narration	Credit Amount (Rs.)	Closing Balance (Rs.)
26-11-2018	BIL/INFT/001584484144/Investment/Shubham /ICICI	7000	98725.50
27-12-2018	BIL/INFT/001606201511/TradingAdvisory/SKSA LES/ICIC	10000	115630.00
14-01-2019	BIL/INFT/001620147826/Advisory transf/SHUBHAM /I	8000	82509.00
20-02-2019	MMT/IMPS/905117043937/Tips/SENTHIL VA/CITY UNION B	5000	43170.50
14-03-2019	UPI/907309314852/One month fees/9321420731 @upi/Cen	20000	81819.50
03-04-2019	NEFT-AXMB190933431374-H R VENKATARAJU-TRADE-514010	100000	388290.00
04-04-2019	NEFT-AXMB190943461081-H R VENKATARAJU-TRADE-514010	100000	488290.00
04-04-2019	MMT/IMPS/909412138422/consultancy fee/NILESH C J/H	7000	695290.00
20-05-2019	MMT/IMPS/914012121440/shares purchase/SANJAY /H	25000	138563.00
22-05-2019	MMT/IMPS/914212131123/Consulting fee/NILESH C J/HD	5000	170063.00
29-05-2019	MMT/IMPS/914917160271/Share market/SANJAY/HDFC	35000	255063.00
11-06-2019	BIL/INFT/001729063820/Investment/	5000	203063.00

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Date	Narration	Credit Amount (Rs.)	Closing Balance (Rs.)
18-06-2019	MMT/IMPS/916914363031/Stocks guidance/ALOK KUMAR/H	3100	232064.00
18-07-2019	BIL/INFT/001756049680/Advisory fees/	10000	274355.00
18-07-2019	NEFT-N199190879500531-RAJ KUMAR GUPTA-SHARES ADVIC	4900	279255.00
30-07-2019	BIL/INFT/001763661081/tips/	70000	467005.00
21-08-2019	BIL/INFT/001780747342/Trading fee/	40000	294038.00
21-08-2019	BIL/INFT/001780841335/consultancy/	25000	324038.00
21-09-2019	UPI/926415311366/Fees to Sinha/shrutillalam18@/HDF	60000	434019.00
26-09-2019	MMT/IMPS/926918795545/trading fees/KING ROADW/KARU	28500	1062030.00
15-10-2019	MMT/IMPS/928807613561/MB: SHARE ADVIS/DHRUV JIGN/K	1600	1051272.00
21-10-2019	MMT/IMPS/929420127006/Consulting fee/NILESH C J/HD	5500	1097687.70
30-10-2019	MMT/IMPS/930310191906/Partial Fees/SAMBHAJI S/HDFC	12000	1246487.70
11-11-2019	BIL/INFT/001845027733/Investment/	10000	549652.70

30. Thus the credit entries in the bank accounts of SK Sales (Noticee 1) after opening of bank account in HDFC Bank and ICICI Bank are as given below:-

Bank Name	No. of credit entries	Total Amount of Credits (Rs.)
HDFC Bank	570	Rs.2,34,42,798.49
ICICI Bank	557	Rs.1,63,59,543.70
TOTAL		Rs.3,98,02,342.19

Order in respect of SK Sales and its partners

31. Both these bank accounts were opened in October, 2018 and the last credit entry is 03.07.2020. From the credit entries appearing in the bank statements of HDFC Bank and ICICI Bank, I note that there is a total credit of Rs.3,98,02,342.19 i.e Rs.3.98 crores. From the preceding paras, I note the narrations in the bank accounts demonstrate that these were received towards the investment advisory services. Further, the description and pricing details available on *Stockkhoj* website further confirms that these are towards unregistered investment advisory services which was being offered by the noticees. I also note that the payment gateway i.e Easebuzz which was appearing on the website was also connected to the HDFC Bank account. Further, during the examination, Easebuzz has informed that it has blocked the noticees on 10.12.2019. However, the last credit in the HDFC account is seen to have been done on 03.07.2020.
32. From the documents submitted by the banks, I note that as per the partnership deed which was registered on 15.09.2018, SK Sales is a partnership firm with Noticee 2 and his wife Noticee 3 as the partners in the firm. I note that from the partnership deed that the profit sharing ratio of the partners i.e. Noticee 3 was 99% and Noticee 2 was 1%. I also note that the initial capital contribution of the firm was Rs.50,000/- and the same was to be contributed in their profit sharing ratio. Further, Noticee 2 is registered as an IA with SEBI in his individual capacity w.e.f. 16.09.2019. However, the firm i.e. SK Sales is not registered with SEBI in any capacity. Hence, I note that unregistered investment advisory services offered on *Stockkhoj* were being carried out through SK Sales i.e. Noticee 1. I further note that the Noticee 2 had not disclosed that he was already engaged in the investment advisory services when he applied to SEBI for registration.
33. During examination, vide email dated 17.03.2020, SEBI had advised the firm to provide various details related to its investment advisory related activities; list of clients, fees charged for the various products, list of all bank accounts maintained and to highlight the bank accounts where the advisory fees were collected, scheme details, promotional material, agreements with the clients, copies of account statement of all bank accounts, etc. However, neither the firm nor the partners have provided specific reply during the examination. The noticees had in their reply to

the SCN stated that they would have provided this information had they received such requests. However, I note that even during the present proceedings, specific details sought from the noticees have not been provided.

34. In their reply to the SCN the Noticees have stated that the website i.e. stockkhoj.com was launched with a motive to create a platform for investors and registered market intermediaries wherein the role of the firm was just restricted to helping the investors in getting the right recommendation / advice. They have also stated that they were in the business of tax advisory which is verifiable from the account opening form which states that they are in the business of 'tax consultancy'. I however, note that the noticees have also stated in the same reply that the object of SK Sales was tax advisory, educational services in share market for trading and investment in equity, options, futures and commodity market and other consultancy services. Hence, it is evident that apart from tax consultancy the objective of the noticee was also other "consultancy services". To prove that they were engaged in tax consultancy, the noticees have only provided some invoices which show that the payment received was towards tax consultancy and return filing. On an examination of these invoices, I note that the buyers / consignees pertain to various locations such as Nashik, Pune, Mumbai. The noticees have not demonstrated as to how these consignees in various cities were aware of business of the firm i.e. the tax consultancy or filing of returns (as mentioned in the invoices). With regard to documentary evidence for the education and tax advisory services provided by the firm, the noticees vide their reply dated 08.03.2023 have stated these services were in the nature of consultation and no records could be maintained by the firm as the education / training for trading and investing in stock market was provided in the live market and hence as result of which the noticees are unable to provide any such proof. Further, noticees have also stated that they would share the written confirmation from their clients that they were not offered any advisory services.

35. I note that the services provided through the website i.e stockkhoj.com were not in the nature of general consultancy services as contended by the noticees but were related to securities markets. The noticees have also not demonstrated with documentary evidence as to how the stockkhoj as a platform was used to connect

the investors with the market intermediaries. I, however, note that the narratives in the bank statements clearly demonstrate that the monies received were towards investment advisory services which were being offered by the noticees which have been brought out at Paras 28 and 29 above. The archived pages of the website which are detailed at Paras 23 and 24 above, also contains the detailed periodicity based pricing details of their services for various categories of securities such as stock cash, stock future, stock option, index future. This shows in no uncertain terms that the noticees were engaged in providing unregistered investment advisory services. I have also examined the invoice provided by the complainant wherein it is clearly stated that *“Trading in financial market is a risky proposition....”*. The invoice also states *“Company will provide telephonic (during office hours) and SMS support (around the clock) to the buyer as per the package chosen”, “Company does not guarantee any return figures to the Buyer and is not liable for losses incurred by the Buyer.” “Kindly refer to the detailed terms, conditions and disclaimers on the Company Website www.stockkhoj.com).* By no stretch of imagination do these statements demonstrate that they pertain to tax consultancy or return filing business as claimed by the noticees. I find that the noticees have neither provided any cogent evidence to support their claim that they were engaged in providing tax consultancy / education considering that there are a large number of credits in the bank accounts. Rather there is ample material on record to infer that the noticees were engaged in providing investment advisory services. The name ‘Stockkhoj’ also suggests that the website pertains to ‘searching stocks’ Hence, in the absence of any independent cogent evidence provided by the noticees and going by the evidence gathered during the examination, I am inclined to conclude that the noticees were providing trading tips / advice through their website which many gullible investors would have fallen prey to.

36. I note that the names that are appearing from the copy of the invoice submitted by the complainant (i.e. Invoice No. SK/18-19/0150 dated 01.11.2018 for an amount of Rs.40,000/-) are SK Sales, Stockkhoj / www.stockkhoj.com / talk@stockkhoj.com. Hence it is also evident that SK Sales is connected with the Stockkhoj website which was providing the unregistered investment advisory services. Further, the noticees have not disputed the fact that the complainant

deposited a sum of Rs.40,000/- through the payment gateway Easebuzz which is linked to the HDFC Bank account.

37. With regard to the complaint, the noticees in their reply have said that the complainant has clearly stated that he was not offered any investment advice and was not provided the details of SEBI registration number as the noticees could not finalize with any registered intermediary to provide the investment advisory services. However, the complaint mentions as follows, *“After registration fee payment done I asked regarding SEBI registration number but he not provided SEBI registration certificate but he demanded extra payment. After payment of money BHATIA provided only 2 calls after that either BHATIA or company persons not responded to my phone call. I have sent so many mails to company they promised to provide calls and SEBI certificate number but they neither provide calls nor provide SEBI registration certificate till date...”*. Hence the statement of the noticees is incorrect. Noticees have further stated that they missed to refund the amount and that the noticee did not receive any call / emails from complainant seeking for refund. They have also contended that no other complaints have been received against them which proves that the firm was not doing any unethical or fraudulent activity.

38. In this regard, I note that the noticees have not disputed the fact that the complainant had paid the registration fees for the services provided by it on the Stockkhoj website. Hence it reinforces the allegation that the noticees were offering their services through the Stockkhoj website for consideration. As regards the defence that no other complaints have been filed against them, it is to be noted that a complaint is just a trigger for SEBI to examine whether the securities law are in violation. One of SEBI's mandate is to protect the interests of investors in the securities market as well as to regulate it. Hence, the argument offered by the noticees cannot be considered relevant to determine whether the noticee has violated the alleged provisions of the SEBI Act and regulations.

39. Another contention raised by the noticees is that the partnership firm i.e. SK Sales was formed by Noticee 3 and Noticee 2 was appointed as a partner just to form the partnership firm. Noticee 2 had 1% stake in the partnership and had no role in the firm. Noticees have contended that with 1% stake it cannot be alleged that noticee 2 has carried out acts on behalf of the firm. Noticee 2 has also placed reliance on decision of Hon'ble Supreme Court in the case of *Sham Sunder v. State of Haryana (1989) 4 SCC 630* stating that it was held that there may be partners who do not know anything about the business of the firm and it would be a travesty of justice to prosecute all partners.
40. It is a fact that Noticee 2 is a partner in the partnership firm alongwith his wife i.e. Noticee 3. Further, from the partnership deed it is noted that Noticee 3 and Noticee 2 are referred to as "party of the first part" and "party of second part" respectively. The deed also states that "*parties of the First and Second parts are desirous of carrying on the business in the partnership as Consultancy Services in the firm name and style of M/s. SK Sales on the terms and conditions contained therein*", "*Partnership between them is hereby constituted upon the terms and conditions hereto after expressed...*".
41. From the partnership deed, it is further noted that both the partners mutually agreed to start the partnership firm on the agreed terms and conditions as mentioned in the partnership deed viz., sharing of profit and loss, bank account of the firm may be maintained by any one of the two parties, partners shall be entitled to increase, reduce or waive the remuneration and may agree to revise the mode of calculating the remuneration etc. and both the partners are referred as "working partners". The deed also refers to the partners agreeing "*to devote their time and attention in the conduct of the affairs of the Firm as the circumstances and business needs may require....*".
42. Further, on verifying the AOF of SK Sales with HDFC Bank (all these documents were provided to the noticees alongwith the SCN) it is noted that with regard to operation of the bank account, the AOF states '*any one signatures below mention partner*' and Noticee 2 being one of the two partners was the authorized signatory.

The authorized email ID in the AOF is of the noticee 2 i.e. sandeepsborse@gmail.com. Further, I note the partnership deed stated that the initial capital of the firm would be Rs.50,000/- and the same would be contributed in the profit sharing ratios of the partners (i.e. 99% by Noticee 3 and 1% by Noticee 2). However, I note that an amount i.e. of Rs.51,000/- for opening the account in HDFC Bank was provided by the Noticee 2 himself. Besides this, the HDFC bank account was also linked to the payment gateway Easebuzz which was displayed on the website i.e. Stockkhaj. Further, I also note during the account opening with ICICI Bank alongwith the other documents there is a cheque dated 09.10.2018 for Rs.50,000/- drawn by Noticee 2. Further, it is also observed that the mode of operation was indicated to be 'severally' viz., the Noticee could independently operate the Bank Accounts. The total of the credits in the bank accounts of SK Sales with HDFC Bank and ICICI Bank was Rs. 3,98,02,342.19 i.e. approximately 3.98 crores. Hence it is highly unlikely that a person who otherwise claims to be having no role in the activities of the firm would be one of the signatories of the Bank Accounts for the firm that too on 'several' basis and where the total credit happen to be in the range of crores of rupees. Although the partnership of the noticee as per the partnership deed was 1%, for all practical purpose it is evident that noticee was actively involved with the firm.

43. The Noticee has also cited the judgement of the Hon'ble Supreme Court in the *Sham Sunder v. State of Haryana, (1989) 4 SCC 630* wherein it was held that there may be partners who do not know anything about the business of the firm. The case law and violations referred by the noticee is not comparable with the present proceedings as the facts in both the cases are different. As brought out in the above preceding para, I note that the noticee was actively involved in the partnership firm and also was the authorized signatory of the bank accounts of the firm. In the absence of any evidence, just a bald assertion by the noticee that he did not know anything about the business of the firm is not sufficient to absolve him of the violations. Besides as per Sections 2(a), 4, 18 and 25 of the Partnership Act, 1932 and Section 27 of the SEBI Act, 1992, every partner is liable, jointly with all the other partners and also severally,

for all acts of the firm done while he is a partner and miniscule shares in the partnership or non participation in the decision making do not absolve such partners from their liability. Hence, every partner shall be liable irrespective of the capital contribution and I don't see any merit in the contention that Noticee 2 was only having 1% stake in the partnership firm.

44. During the personal hearing as well as written submissions, the Noticees have referred to the SEBI order in the matter of *Star World Research* wherein according to the noticees it was held that if there is no absolute /conclusive evidence then the violations / allegations cannot be established. The noticees have also made a reference to the SAT order in the matter of Ms. Suhanika Chourey wherein according to the noticees, the SAT set aside the order as there was no evidence brought on record. The aforesaid case laws referred by the noticees are not comparable with the present proceedings as I note from the preceding paragraphs sufficient evidences are on record to show that the noticees were engaged in providing investment advisory services without obtaining the necessary registration from SEBI. Further, in the case w.r.t Suhanika Chourey referred by the Noticees, the Hon'ble SAT has only dropped the charges of fraud due to lack of sufficient evidence and has in fact upheld the SEBI findings w.r.t the unregistered investment advisory activities of the appellant.

45. I note that the partnership deed was registered on 15.09.2018 and the bank accounts were opened by the firm in October, 2018. The partnership firm i.e Noticee 1 and Noticee 3 are not registered with SEBI in any capacity. Noticee 2 had sought for grant of registration with SEBI as an Investment Adviser in his individual capacity in April 2019. He was accordingly granted registration w.e.f 16.09.2019. The noticee 2 had not informed SEBI at the time of applying as an IA in his individual capacity regarding the partnership firm which was already engaged in unregistered IA work.

46. Considering the aforesaid factual analysis about the activities of the noticees as can be seen from the website as detailed at Paras 23 and 24, the narratives in the bank statements at Paras 28 and 29, details of complaint, as well as the

submissions made during the hearing as well as written submissions made by noticees, I am inclined to agree with the allegations in the SCN that the noticees were engaged in business of providing investment advice to the public in lieu of monetary consideration and were thus acting as 'investment advisers' as defined under regulation 2(1)(m) of the IA Regulations. Based on the above, I conclude that the activities indulged into by the noticees squarely fall into the category of investment advisory services as defined under Regulation 2(1)(l) of the IA Regulations. Further, the Noticees ie. 2 and 3 have carried out these IA activities through the partnership firm ie Noticee 1 which is not registered with SEBI. Hence, I note that all the noticees are liable for violation of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the SEBI (IA) Regulations, 2013.

47. The activities undertaken by the noticees as brought out from the material described above, seen in the backdrop of the aforesaid regulatory provisions show that the noticees 2 and 3 were carrying out IA activities through their unregistered partnership firm i.e Noticee 1. Further, although Noticee 2 is registered with SEBI, he has not conducted his IA activities in his individual capacity but rather through the partnership firm which is not registered with SEBI. Besides he has conducted such activities through the unregistered firm not only prior to his being granted registration but also thereafter as is evident from the bank statements.

48. In order to ensure that the investors who receive investment advice are protected, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration with SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992. Section 12(1) of the SEBI Act, 1992 reads as under:

“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.”

49. Further, the registration of the investment advisers is mandatory as per Regulation 3(1) of the IA Regulations, 2013 which reads as under:

“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.”

50. I note that in terms of Section 12 (1) of the SEBI Act and Regulation 3 (1) of the IA Regulations, no investment adviser shall act as an investment adviser or hold itself out as an investment adviser unless it has obtained a certificate of registration from SEBI.

51. 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.

52. I note that the 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 interest.

53. I note that the activities of the Noticees show that they were acting as investment advisers without holding a valid registration with SEBI. I find that these activities were being carried out by the Noticees 1 to 3 without obtaining the necessary certificate of registration as investment advisers and therefore, the Noticees have violated Section 12(1) of the SEBI Act along with Regulation 3 (1) of the IA Regulations.

54. The SCN, *inter alia*, envisages issuance of a direction to Noticees for refund of the advisory fees collected from the investors. I note that the fees were collected by an unregistered entity. From the bank accounts, it is noted that a total amount of Rs.3.98 crores have been collected by the noticees towards the unregistered advisory services. In this regard, I note that the noticees have referenced the Order passed by Hon'ble SAT in the matter of *Shri Pushpendra Bhalse* wherein the matter was remitted to SEBI only on the question to decide as to what was the actual amount that was received by the appellant towards the advisory services. I have perused the said order and note that SAT had upheld the order of SEBI with respect to the unregistered investment advisory services that was being offered by the appellant and had remitted the matter to SEBI only to decide the actual amount. SAT in its order had also directed the appellant to provide necessary evidence which would have to be considered by SEBI while passing the order.

55. In this regard, during the personal hearing held on 01.03.2023, the AR submitted that the total amount for credits in HDFC and ICICI Bank account statement should not be taken into consideration which is double counting as these are internal transfers between these two accounts. Accordingly vide the record of proceedings dated 02.03.2023 which was sent to the noticees, they were given time till 08.03.2023, *inter alia*, to provide the break up of credits received in HDFC Bank and ICICI Bank, including the names from whom credits were received and purpose for which the same was sent. The noticees, however, vide their reply dated 08.03.2023 have just provided the following snapshot:-

ICICI TOTAL CREDIT :	1,63,59,543.00
HDFC TOTAL CREDIT :	1,43,53,999.00
TRF HDFC TO ICICI :	1,14,28,219.00
Net Revenue :	1,92,85,323.00

56. Thus, the noticees have not provided the information that was specifically sought i.e. the break-up of credits received in HDFC Bank and ICICI Bank, including the names from whom credits were received and purpose for which the same was sent. Instead they only gave the above snapshot vide their reply dated 08.03.2023. No additional evidences / details were provided by them. I note that the noticees have

only given the total figures in the snap shots and have not provided these break ups / details or evidences, despite specifically being asked to provide the same.

57. Further, after the settlement application was rejected, the noticees vide email dated 01.11.2023 were once again provided a further opportunity and were advised, *inter alia*, to provide clear break-up of the credits and the purpose for which they were received. Noticees were given time till 08.11.2023 to provide these details. However, on 08.11.2023, Noticee 2 while seeking additional time of 3 weeks to make the submissions, stated “....we are in the midst of bifurcating the revenue received from education and tax advisory alongwith the details of refunds made. Since, there are numerous transactions and also the matter is old, so it is taking time. Moreover, we are also approaching the clients who have paid us for our services for obtaining undertaking from them....”

58. I note that the noticees were granted additional time till 17.11.2023 to submit their reply. However, till date no reply has been provided by the noticees. I note that the noticees have been given ample opportunities and sufficient time during the instant proceedings to provide details / break up of the funds in the bank accounts which pertained to the unregistered investment advisory services. However, the noticees have not availed of such opportunities and have not provided relevant information. By only giving a snapshot of the figures, it is difficult to concur with their submissions as to how they have arrived at the “Net Revenue” figure provided by them. Further in the case referenced by the noticee, while remitting the matter, SAT has clearly stated that “*necessary evidence may be filed by the appellant which will be considered....*”

59. Notwithstanding, on an independent examination of these bank statements I find that there is a total sum of Rs.95,25,046/- which appears to be interse transfer of funds from HDFC Bank Account No. 502xxxxxxx098 to ICICI Bank 187xxxxxx601 of Noticee 1. Details as appearing in the ICICI account are as follows:-

IFSC_Code	Date_of_transaction	Narration	Credit_Amount	Line_Balance
ICIC0001879	08-11-2018	NEFT-N312180676098355-S K SALES-OTHER-502000341620	199000	211001

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IFSC_Code	Date_of_transaction	Narration	Credit_Amount	Line_Balance
ICIC0001879	08-11-2018	NEFT-N312180676104638-S K SALES-OTHER-502000341620	149000	360001
ICIC0001879	08-11-2018	NEFT-N312180676082679-S K SALES-OTHER PAYMENT-5020	199000	559001
ICIC0001879	08-11-2018	NEFT-N312180676103141-S K SALES-OTHER PAYMENT-5020	199000	758001
ICIC0001879	08-11-2018	NEFT-N312180676083052-S K SALES-OTHER-502000341620	199000	957001
ICIC0001879	08-11-2018	NEFT-N312180676103404-S K SALES-OTHER-502000341620	199000	1156001
ICIC0001879	08-11-2018	NEFT-N312180676103648-S K SALES-OTHER-502000341620	199000	1355001
ICIC0001879	08-11-2018	NEFT-N312180676103815-S K SALES-OTHER-502000341620	199000	1554001
ICIC0001879	08-11-2018	NEFT-N312180676103948-S K SALES-OTHERS-50200034162	199000	1753001
ICIC0001879	04-12-2018	RTGS-HDFCR52018120454982071-S K SALES-502000341620	1000000	1187725.5
ICIC0001879	04-12-2018	NEFT-N338180694694804-S K SALES-other-502000341620	90000	97200.5
ICIC0001879	06-12-2018	NEFT-N340180696789186-S K SALES-SK Sales-502000341	50000	93452.5
ICIC0001879	11-12-2018	NEFT-N345180700308810-S K SALES-FOR RAJESH-5020003	200000	233453.5

Order in respect of SK Sales and its partners

IFSC_Code	Date_of_transaction	Narration	Credit_Amount	Line_Balance
ICIC0001879	02-01-2019	RTGS-HDFCR52019010259016730-S K SALES-502000341620	850000	1024630
ICIC0001879	04-01-2019	NEFT-N004190718691086-S K SALES-SK ICICI TRANSFER-	45000	269388
ICIC0001879	11-01-2019	NEFT-N011190725071612-S K SALES-Internal Transfer-	99000	138389
ICIC0001879	05-02-2019	RTGS-HDFCR52019020563552425-S K SALES-502000341620	850000	872580.5
ICIC0001879	13-02-2019	NEFT-N044190750810694-S K SALES-THINKMOBI PAYMENT-	103840	126510.5
ICIC0001879	06-04-2019	NEFT-N096190795260194-S K SALES-INTERNAL TRANSFER-	199000	896290
ICIC0001879	06-04-2019	NEFT-N096190795268059-S K SALES-INTERNAL TRANSFER-	199000	1095290
ICIC0001879	06-04-2019	NEFT-N096190795264119-S K SALES-INTERNAL TRANSFER-	102000	1197290
ICIC0001879	16-04-2019	MMT/IMPS/910613138726/DNS IT/S K SALES /HDFC BANK	106200	167872
ICIC0001879	01-07-2019	NEFT-N182190864406075-S K SALES-INTERNAL TRANSFER-	199999	393102
ICIC0001879	01-07-2019	NEFT-N182190864419706-S K SALES-INTERNAL TRANSFER-	199999	593101
ICIC0001879	01-07-2019	NEFT-N182190864407128-S K SALES-INTERNAL TRANSFER-	199999	793100

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IFSC_Code	Date_of_transaction	Narration	Credit_Amount	Line_Balance
ICIC0001879	01-07-2019	NEFT-N182190864423303-S K SALES-INTERNAL TRANSFER-	199999	993099
ICIC0001879	02-08-2019	NEFT-N214190891736240-S K SALES-INTERNAL TRANSFER-	150001	721509
ICIC0001879	02-08-2019	NEFT-N214190891741111-S K SALES-INTERNAL TRANSFER-	150004	871513
ICIC0001879	02-08-2019	NEFT-N214190891740717-S K SALES-INTERNAL-502000341	150003	1021516
ICIC0001879	02-08-2019	NEFT-N214190891740060-S K SALES-INTERNAL TRANSFER-	150002	1171518
ICIC0001879	04-09-2019	RTGS-HDFCR52019090494022276-S K SALES-502000341620	800000	1081043
ICIC0001879	12-09-2019	NEFT-N255190926291302-S K SALES-INTERNAL TRANSFER-	150000	251375
ICIC0001879	01-10-2019	NEFT-N274190941870495-S K SALES-INTERNAL TRANSFER-	190000	202697
ICIC0001879	01-10-2019	NEFT-N274190941877881-S K SALES-INTERNAL-502000341	190000	392697
ICIC0001879	01-10-2019	NEFT-N274190941888728-S K SALES-INTERNAL-502000341	190000	582697
ICIC0001879	01-10-2019	NEFT-N274190941883068-S K SALES-INTERNAL-502000341	190000	772697
ICIC0001879	01-10-2019	NEFT-N274190941880688-S K SALES-INTERNAL-502000341	190000	962697

Order in respect of SK Sales and its partners

IFSC_Code	Date_of_transaction	Narration	Credit_Amount	Line_Balance
ICIC0001879	01-10-2019	NEFT-N274190941893403-S K SALES-INTERNAL-502000341	190000	1152697
ICIC0001879	02-01-2020	RTGS-HDFCR52020010262507425-S K SALES-502000341620	400000	470374.7
TOTAL			9525046	

60. In light of Para 59 regarding the *inter se* transfer of funds between the two bank accounts and also taking into consideration that the initial account opening fund of Rs.51,000/- in HDFC Bank was provided by the Noticee 2 himself, the revised amounts to be refunded by the noticees towards their unregistered investment advisory services will be as follows:-

Details	Amount (Rs.)
Total Amount of credits in HDFC Bank and ICICI Bank as per SCN dated 21.11.2022	Rs.3,98,02,342.19
Less: interse transfer between accounts	Rs. 95,25,046.00
Less : Amount transferred by Noticee 2 for account opening i.e.Rs.51,000/- in HDFC Bank	Rs. 51,000.00
Total revised amount to be refunded by Noticees	Rs.3,02,26,296.19

61. Further, the SCN also called upon the Noticees to explain as to why appropriate penalty should not be imposed upon them under Section 15HB (for violations prior to 08.03.2019) and Section 15 EB (for violations after 08.03.2019) 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. The relevant extracts of Section 15 EB and Section 15HB of the SEBI Act, 1992, is reproduced, hereunder:-

“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.”*

“Penalty for contravention where no separate penalty has been provided.

15HB. *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.”*

62. For imposition of penalties 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.”

63. I note that the SCN has not brought out the quantum of profits / gains made by the noticees by collecting such unauthorized fees nor does it quantify the loss the clients have suffered. However, as brought out in the above paras, the noticees have offered these services to a large number of gullible investors/ clients in violation of the IA Regulations and have garnered a huge amount towards these unregistered activities. Hence, monetary penalty is also attracted for the said violations under Sections 15 EB and 15HB of the SEBI Act. It is noted that, Noticee 2 who is a registered investment adviser in his individual capacity has carried out investment advisory activities through his partnership firm which was not informed by him at the time of seeking registration with SEBI. Further, he has continued to carry out investment advisory activities through the partnership firm thereafter. Enquiry proceedings in the matter is currently underway.

64. On a conjoint reading of Sections 2(a), 4, 18 and 25 of the Indian Partnership Act, 1932 and Section 27 of the SEBI Act, 1992, every partner is liable, jointly with all the other partners and severally, for all acts of the firm done while he is a partner. The relevant provisions are given below:

Section 2(a) of Indian Partnership Act, 1932

(a) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

Section 4 of Indian Partnership Act, 1932

Definition of "partnership", "partner", "firm" and "firm-name" : "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

Section 25 of Indian Partnership Act, 1932

Liability of a partner for acts of the firm: Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Section 27 of the SEBI Act, 1992

27. (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who

at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

DIRECTIONS

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

- (a) The Noticees 1 to 3 shall jointly and severally refund the amount / fees / consideration received from any complainant / investor / client, within a period of three (3) months from the date of coming into force of this direction, in respect of their unregistered investment advisory activities.
- (b) The Noticees, 1 to 3 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 Noticees 1 to 3, are prevented from selling their 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 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 Noticees, as directed in this order, from the bank accounts of the Noticees;
- (e) After completing the aforesaid repayments, the Noticees 1 to 3, 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 (MIRSD), 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 65 (a) and (b) above, duly certified by an independent Chartered Accountant and the direction at para 65 (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 Noticees 1 to 3, to comply with the aforesaid directions in sub-paragraphs 65 (a) and (f), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover

such amounts, from the Noticee, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;

- (h) The Noticees 1 to 3, are debarred from accessing the securities market, directly or indirectly and are 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 as directed in paragraph 65 (a) above, whichever is later;
- (i) The Noticees 1 to 3, are hereby imposed with a penalty of Rs. 3,00,000/- (Rupees three lakh only) under Section 15 EB and a penalty of Rs.3,00,000/- (Rupees three lakh only) under Section 15HB of the SEBI Act, 1992 and further jointly and severally directed to pay the penalty within a period of forty-five (45) days, from the date of receipt of this order;
- (j) The Noticees 1 to 3, 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 The details/ confirmation of e-payment should be sent to "The Division Chief, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, 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 along with order details)	
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(k) The Noticees 1 to 3, shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 65 (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. With respect to Noticee 2, this direction shall be subject to the outcome of the enquiry proceedings mentioned at Para 63 above.

66. The direction for refund, as given in paragraph 65(a) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

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

68. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of mutual funds as well as BSE Administration & Supervision Ltd. (BASL) to ensure that the directions given above are strictly complied with.

Date: December 28, 2023

Place: Mumbai

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

Order in respect of SK Sales and its partners