

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Mr. Ashish Kumar (Proprietor of M/s Subham Traders)	AYWPK4371N

In the matter of unregistered Investment Advisory by Mr. Ashish Kumar, Proprietor of Subham Traders.

BACKGROUND:

1. Securities and Exchange Board of India (“hereinafter referred to as **SEBI**”) conducted an examination based on the receipt of a complaint through email reference against Mr. Ashish Kumar (Proprietor of Subham Traders) (hereinafter referred to as “**Noticee**”). It was prima facie found that the Noticee was engaged in investment advisory services without obtaining a certificate of registration from SEBI in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**” and Regulations 3(b), (c) & (d) and 4(1), 4 (2)(o) and 4 (2)(s) of the PFUTP Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”).
2. The facts of the case, as mentioned in the SCN, are the following:

- a. SEBI received a complaint against the Noticee, inter-alia alleging that the complainant lost money fraudulently collected by Subham Traders fees of Rs.17,000/- under the pretext of providing demat account handling services and weekly returns through trading.
- b. In this connection, the complainant provided certain documents as evidence, in support of his complaint, like the proof of payments made to the Axis Bank account of the Noticee in which the money was transferred by the complainant. Further, the complainant also provided screenshots of Telegram messages of details provided by Noticee and communication/chat with a representative of the Noticee.
- c. Based on the proof submitted by the complainant, an analysis of Axis Bank account statement of the Noticee was done, wherein, it was observed that the complainant had deposited Rs.17,000/- in the bank account of the Noticee.
- d. It was also observed that the Noticee had a Telegram channel i.e. "BOT SONALI" (<http://wa.me/918653210928>). The Telegram channel, was not active at the time of issuance of SCN. However, it was observed that Noticee shared all the details of plans on his Telegram channel through which he shared the details of various plans to the potential investors including the details of fees for the account handling services along with profit details, capital required and validity of the plan and also shared weekly performance of the trading which include the amount of returns generated through trading over certain investment in a specific time period.
- e. The Noticee had disclosed the following information on his telegram channel:
"Nse Bot Trading:
 - 3500-4500% Return Yearly
 - 20000 Investment
 - Configure Your Trading Acc ID PW in our Bot System
 - No any Single Manual Trade
 - 100% Profit Guarantee With Return Agreement"

"Working in the competitive world of advisory companies we are following the above words and providing our clients the best possible services in the field of stock and commodity market. We give all sort of best possible training to our business development executive like soft skills, knowledge related to market analysis and how to build customer relationship and sustain it for a long time. Research house is a company where we have the best research team for each segment of the market."

- f. Further it was observed that the Noticee was providing the following three services on his telegram channel, the details of which are as under: -

Table No. 1

Sr. No.	Particulars	Duration	Capital Requirement (in Rs.)	No. of trades	Daily Return (in %)	Price (in Rs.)
1	Retail Service	1 year	20,000	1	10 to 20	17,000
2	Professional Service	1 year	50,000	1-2	30 to 50	51,000
3	HNI / Jackpot Service	1 year	50,000 to 1,00,000	2-3	50 to 100	1,11,111

- g. The Noticee offered two plans with respect to stock market on his telegram channel, the details of the plans are as under:

Plan 1:

*“ FEES 51000 FOR 1 YEAR
JUST SEND ID AND PASS OF YOUR DEMAT ACCOUNT.
WE WILL INSTALL IT WITH OUR BOT TRADING SYSTEM.
AND TRADES WILL BE DONE AUTOMATICALLY.
50000 TO 100000 /- CAPITAL AND 15 LACKS PROFIT THIS DIWALI.
FEES IS TO BE PAID IN ADVANCE THEN ONLY WORK WILL START.”*

Plan 2:

“ Hello Traders,

- ✓ *This is Best BOT Trading Platform in India.*
 - ✓ *Capital Requirements 50000 – As capacity*
 - ✓ *Daily Base Return 40-100%*
 - ✓ *Intraday Position Only*
 - ✓ *Only jackpot services*
 - ✓ *Jackpot Services 1,11,111/-*
 - ✓ *Service Start 12 Hrs After Registration Process.*
- More Details Click Below Whatsapp Link.”*

- h. It was understood from the complaint received by SEBI that the bank account for making payment was communicated via message through Telegram. The details of the bank account are tabulated below:

Table No. 2

Sl. No.	Bank	Account Name	Account No.
1.	Axis Bank Ltd.	Subham Traders	921020025984323

- i. Based on the bank account details provided by the complainant, Bank account statement, Account Opening Form (AOF) and KYC were sought from various banks. However, the same was received only from Axis Bank and HDFC Bank.
- j. From the analysis of KYC, AOF and bank account statements provided by Axis Bank and HDFC Bank, it was observed that there were several credit entries with the description such as 'trading', 'service', 'bot trading', 'algo trading', 'bot', 'registration fee', 'subscription fee', 'investment', 'fees', 'demat holding', 'market', 'stocks', 'trading services', 'shares' etc., which were in the nature of fees collected for investment advisory activities. An illustrative list of these entries are reproduced below:

Table No. 3

Axis Bank Account Statement			
Date	Particulars	UTR No.	Amount Credited (Rs.)
03-09-2021	NEFT199377909SAGAR HARIBHAU JADHAV <i>Trading BOT</i>	-	17000.00
04-09-2021	NEFT199924067KRUPESH PARMARNEFT <i>Trading Fees S</i>	-	17000.00
16-09-2021	NEFT209099025SURESH BABU MNEFT <i>Investment Sub</i>	-	51001.00
16-09-2021	IMPSP2A125918240462SAMIRDSOICICIB AN <i>Bot Tradi</i>	-	17000.00
17-09-2021	UPIP2A126089169886TINKESH PHDFC BANK <i>shares</i>	-	17000.00
HDFC Bank Account Statement			
Date	Particulars	UTR No.	Amount Credited (Rs.)
25/10/21	UPI-BHANU PRATAP CHANDR-BHANU.BPCRK@OKSBI-SBIN0007454-129810135384- <i>ALGO TRADING FEES</i>	129810135384	7,000.00
25/10/21	UPI-KARTHIK RAJENDRAN KARTHIK030714@OKHDFCBANK -HDFC0000523-129809291677- <i>TRADING BOT RETAIL</i>	129809291677	7,000.00
27/10/21	UPI-RIZWAN ISMAIL MEMON-RIZMEMON2-1@OKICICI-ICIC0006239-130093023538- <i>SHARES INVESTMENT</i>	130093023538	7,000.00

- k. From the above, it can be seen that the Noticee was using two bank accounts for collecting the fees in respect of the aforementioned activity. The details of the bank accounts and the amount collected therein are as under:

Table No. 4

S.No.	Bank Name & A/C No	Account Name	Name of proprietor	Date of last transaction	Account Status	Amount considered as Advisory fee
1	Axis Bank 921020025984323	Subham Traders	Ashish Kumar	04/10/2021	-	91,18,766
2	HDFC Bank 50200060153456	Subham Traders	Ashish Kumar	31/10/2021	-	32,73,672

- i. Besides above, it was also observed that the Noticee was even assured guaranteed returns and fraudulently collected monies from investors as the assurance of guaranteed returns lured the investors.
- m. In this connection it was observed that the Noticee knowingly concealed the fact that he was not registered with SEBI as an investment adviser, and also misrepresented about his expertise in investment advisory thereby luring and inducing investors to deal in the markets by availing his services with the objective of enhancing his income.
- n. From the above, prima facie, found that the Noticee was involved in unregistered investment advisory activities without obtaining SEBI Registration
- o. Based on the aforesaid facts, it was alleged in the SCN that the Noticee has violated the provision of Section 12(1) of the SEBI Act read with Regulation 3(1) of IA Regulations for engaged in Investment Advisory activities without obtaining the requisite registration from SEBI.
- p. Further, it was also observed and alleged that the Noticee had fraudulently represented account handling services and managed capital by trading in the markets for the clients and assured guaranteed returns evidently, knowingly concealed the fact that he was not registered with SEBI as an investment adviser, and had also misrepresented about his expertise in investment advisory thereby luring and inducing investors to deal in the markets by availing his services with the objective of enhancing his income. The conduct of the Noticee through the aforementioned activities was alleged to be 'fraud' in terms of the Regulation 2(1)(c) of PFUTP Regulations, 2003.

- q. In view of the above, it was alleged that the Noticee has also violated the Regulations 3(b), (c), (d), 4(1), 4(2) (k), 4(2)(s) of PFUTP Regulations read with Section 12 A (a), (b) and (c) of the SEBI Act.
- r. In view of the above, a Show Cause Notice dated May 15, 2023 (hereinafter referred to as “the SCN”) was issued called upon the Noticee to show cause as to why suitable directions including direction of refund of fees/monies collected from the investors should not be issued against the Noticee under Sections 11(1), 11(4) and 11B(1) of the SEBI Act and penalty under Sections 11(4A) and 11 B (2) of SEBI Act read with Sections 15 EB and Section 15HA of SEBI Act for the violations of Section 12(1) of the SEBI Act read with Regulation 3(1) of IA Regulations and Regulations 3(b), (c) & (d) and 4(1), 4 (2)(o) and 4 (2)(s) of the PFUTP Regulations .
3. The aforesaid SCN was issued to the Noticee by SPAD at the last known address as available on record, however, it had returned undelivered. Thereafter, affixture of the SCN was also attempted, on the said address, however, the same could not be carried out as the Noticee was not available at the said address. Subsequently, a copy of the SCN was uploaded on the website under the head, ‘unserved Notices/Summons’. Further, a public notice was also issued in the “Times of India” (English Edition), Ranchi and “Hindustan” (Hindi Edition), Ranchi, on December 12, 2023. Vide the said public notice, the Noticee was also given an opportunity of personal hearing on December 21, 2023 at 11.30 a.m. However, the Noticee failed to appear for the scheduled hearing.
4. I note that the Noticee has neither filed any reply in the matter nor appeared for hearing. Hence, it is presumed that Noticee has nothing to submit in respect of the allegations levelled in the SCN. In this regard, it is pertinent to note that the Hon’ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, held that, *".....the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*.

5. Further, in view of the aforesaid observation made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against the Noticee ex-parte, based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS:

6. I have considered the material available on record including complaint, on record and the following issue requires consideration:

Whether the acts of the Noticee as imputed in the SCN, have resulted in the violation of the provisions of SEBI Act, 1992 read with IA Regulations, 2013 and PFUTP Regulations, 2003, while providing the services related to Investment Advisory without having proper registration?

7. Before proceeding further in the matter, it is pertinent to refer to the relevant provisions of the SEBI Act, IA Regulations and the PFUTP Regulations, alleged to have been violated by the Noticee, as per the SCN. The relevant provisions of law are reproduced herein below:

SEBI Act

Section 12 (1) - Registration of stock brokers, sub-brokers, share transfer agents, etc.

" 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:"

Section 12A - Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

"No person shall directly or indirectly-

- a. use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- b. employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;*
- c. engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"*

IA Regulations

Regulation 2(1)(g) – Definition of Consideration

"consideration" means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;

Regulation 2(1)(l) – Definition of Investment Advice

"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 Provided that investment advice given 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;”

Regulation 2(1)(m) – Definition of Investment Adviser

“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;”

Regulation 3(1) – Requirement of Registration from SEBI to act as Investment Adviser

“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:”

PFUTP Regulations, 2003

Section 3 - Prohibition of certain dealings in securities

“No person shall directly or indirectly-

(a)

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under”.

Section 4- Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: -

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

(s) mis-selling of securities or services relating to securities market;”

8. I now proceed to consider the matter on merits.

9. Regulation 2(1)(m) of the IA Regulations defines the term ‘*investment adviser*’. As per Regulation 2(1)(m) of the IA Regulations, investment adviser means any person, who is engaged in the business of providing investment advice to clients or other person or group of persons for consideration. Further, it includes any person who holds himself out as an ‘*investment adviser*’. Regulation 2(1)(m) of the IA Regulations refer to terms ‘*consideration*’ and ‘*Investment advice*’. As per Regulation 2(1)(g) of the IA Regulations, consideration means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice. As per Regulation 2(1)(l) of the IA Regulations, ‘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. However, advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public, shall not be an investment advice within the meaning of Regulation 2(1)(l) of the IA Regulations.

10. From the facts mentioned in the SCN such as shared details of various plans through telegram channel to the complainant including the details of fees for account handling services along with profit details, capital required and validity of the plan and also sharing the bank account details for collecting the fees for service rendering as well as the narration of the bank statement i.e. '*trading*', '*service*', '*bot trading*', '*algo trading*', '*bot*', '*registration fee*', '*subscription fee*', '*investment*', '*fees*', '*demat holding*', '*market*', '*stocks*', '*trading services*', '*shares*' etc., clearly indicates that the Noticee was engaged in investment advisory service relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through his telegram channel, in lieu of consideration. It is therefore noted that, if an entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client in lieu of consideration, including entities which are holding themselves out as investment advisers, will be covered by the definition of '*Investment Adviser*' as given in Regulation 2(1)(m) of the IA Regulations. This apart, as noted above, the receipt of consideration of Rs.17,000/- from the complainant in HDFC Bank account for the investment advisory services provided by the Noticee is nothing but these services were being offered by the Noticee in lieu of the consideration, as noted above. Hence, I find that without any doubt in terms of Regulation 2(1)(l) of IA Regulations, 2013, the Noticee was doing Investment advisory services through his telegram channel. Therefore, I find that the Noticee was engaged in the business of providing investment advice to his clients, for consideration, and was holding himself out to be Investment Adviser' as given in Regulation 2(1)(m) of the IA Regulations, 2013.
11. Further, despite the various opportunities given to the Noticee, I note that he has not made any submissions to prove that the said 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 acted as an investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations.

12. I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, 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”*.

13. 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 the SEBI Act and Regulations framed thereunder. Section 12(1) of SEBI Act reads as under:

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

14. Therefore, I note that in order to obtain a certificate of registration for acting as an investment adviser, an entity is required to satisfy, inter alia, the following requirements, as provided under the 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 nonrefundable application fee;
- ii. The applicant, in case of an individual investment adviser or its principal officer 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.

15. Further, the IA Regulations requires minimum professional qualification and prescribes mandatory net-worth. Further, it *inter-alia* provides for disclosures of any conflict of interest, risk profiling of clients, maintenance of records related to client assessments and the suitability of advice. The prescriptions in the IA Regulations are intended to safeguard the interest of investors and curb the perpetration of unregistered entities entering the field of investment advisory services and indulging in unscrupulous market practices.

16. Therefore, in the present matter it is noted that the Noticee was not registered with SEBI in the capacity of Investment Adviser during the period under examination. It is further observed that the Noticee received amounts to the tune of Rs.91,18,766/- and Rs.32,73,672/- in the bank accounts of Axis Bank and HDFC Bank, respectively, totaling to Rs.1,23,92,438/- which are in the nature of Investment Advisory fees.

17. In view of the above, I find that aforesaid total credit of Rs.1,23,92,438 /- in the bank accounts of Axis Bank and HDFC Bank of the Noticee was received by him as fee for investment advisory services while acting as an investment adviser without obtaining certificate of registration from SEBI. In view of the above, I find that the Noticee by acting as investment adviser within the meaning of the IA Regulations, without obtaining certificate of registration from SEBI has acted in total disregard to the requirements of law and has violated Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act.

18. With respect to the other allegation of fraud, I note the following:

- a. The Noticee has mentioned “Daily Base Return 40-100%” and “3500-4500 % Return Yearly” on his telegram channel. It has also mentioned “*100% Profit Guarantee With Return Agreement*”.
- b. In description of the plans / packages offered by the Noticee, it is mentioned that “JUST SEND ID AND PASS OF YOUR DEMAT ACCOUNT. WE WILL INSTALL IT WITH OUR BOT TRADING SYSTEM *AND TRADES WILL BE DONE AUTOMATICALLY*”.
- c. It can be seen from the table no.1 above, which is related to details of plans/ packages offered by the Noticee to investors that the Noticee mentioned Daily Returns (in %) from 10-20, 30-50 and 50-100 for his Retail, Professional and HNI/Jackpot services.

19. From the above, it is clear that the Noticee promised guaranteed returns to the investors through his plans which intended to induce/influence the investor to invest their money in share market. The said assurance of loss recovery without any basis

and further assured maximization of returns etc., are an active concealment of the material fact that every investment in the market is subject to market risk. In this regard, I note that the Noticee adopted business tactics to induce the clients into availing the services he offered. Further, the act of conveying high/maximum returns or certainty of profit, is nothing but indulging in for the purposes of luring customers in its net and thereby increasing its income. In light of the same, the act of the Noticee to actively conceal material information, is a non-genuine and a deceptive act and has been made with an intent to influence the clients to avail of its advisory services and deal in securities. In my view, promising assured returns/ assured loss recovery in securities market amounts to misrepresentation and misleading the investors. Such reckless conduct intended to induce investors to deal in securities constitutes 'fraud' under the PFUTP Regulations.

20. Further, It is pertinent to refer to the observations of the Hon'ble Supreme Court in the case of **SEBI Vs. Kanaiyalal Baldevbhai Patel** (2017) 15 SCC 1, which are as under-

*"The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".....
.....to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient."*

21. In this regard, the observation recorded by the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Kanaiyalal Baldevbhai Patel** [(2017) 15 SCC 1] is worth quoting: “...A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did...”. Therefore, I am constrained to observe that the acts of the Noticees of resorting to misrepresentation and spreading falsehood about, promise of assured profit/unreasonably high returns/assured loss recovery etc. are fraudulent in nature, having the potential to fraudulently induce the investors to deal in securities by availing of the services of the Noticee.
22. In this regard, I further rely upon the decision of the Hon'ble SAT in the matter of **MSS Trading System Centre and Anr. Vs. SEBI**, dated December 12, 2022, wherein the Hon'ble Tribunal has held that “We are of the opinion that such assurance of profit given by the appellant was totally fraudulent and in violation of Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003” also I find that the Noticee has made descriptions regarding returns in a very reckless and careless manner. Further, the Noticee, by assuring guaranteed returns by investing in shares, has violated the fundamental canon of the securities market i.e. investments are subject to market risks and therefore, has knowingly misled the investors at large by engaging in acts, practices, course of businesses which operated as ‘fraud’ as defined under Regulation 2(1)(c) of the PFUTP Regulations.
23. I further note that Regulation 3 prohibits certain dealings in securities wherein manipulative or deceptive methods are used, or any entity employs any device or scheme or artifice to defraud in connection with dealing in or issuing securities and also engage in any act, practice, course of business which operate as fraud or deceit

upon any person in connection any dealing in or issue of securities. further, I also note that Regulation 4(2)(k) provides that dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities. Also, Regulation 4(2)(s) of the PFUTP Regulations prohibits mis-selling of securities or services related to securities market. Mis-selling has further been explained in the said Regulations to mean knowingly making false or misleading statements or not taking reasonable care to ensure suitability of the securities or services to the buyer. Therefore, I note that the Noticee was indeed involved in mis-selling of services to his clients by making false and misleading statements of providing guaranteed returns to the investors.

24. Thus, I note that the Noticee by assuring guaranteed returns with respect to his investment advisory related plans, without obtaining the necessary certificate of registration as an investment adviser and knowingly publishing false and misleading information, has used non-genuine, deceptive means like engaging in business created thereby defraud potential investors by inducing them to invest in the shares based on the advice promising guaranteed returns, which, I find are in violation of the provisions of Regulation 3 (b), (c) & (d) and 4(1), 4 (2)(k) and 4 (2)(s) of the PFUTP Regulations read with Section 12A(a), (b), (c) of the SEBI Act.

25. Thereafter, I note that the SCN has called upon the Noticee to show cause as to why appropriate penalty be not imposed upon him under Sections 15EB and 15HA of SEBI Act for the violations alleged in the SCN. Sections 15 EB and 15HA of the SEBI Act are reproduced hereunder: -

Section 15 EB - Penalty for default in case of investment adviser and research analyst

“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.”

Section 15HA - Penalty for fraudulent and unfair trade practices

“If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher”.

26. From the above, I note that the Noticee’s activities show that he was acting as an investment adviser without holding the certificate of registration as investment adviser. Therefore, he knowingly misrepresented himself as a SEBI registered entity to investors /clients, collected money from the investors and also indulged in fraudulent activities of assuring guaranteed returns. Such misleading representations are deceptive and fraudulent in nature and in violation of Regulation 3(b), (c) & (d) and 4(1), 4 (2)(o) and 4 (2)(s) of the PFUTP Regulations read with Section 12A(a), (b), (c) of the SEBI Act. Further, the Noticee continuously received investment advisory fees in his bank accounts since date of opening of such bank accounts, in violation of Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act from July, 2021. Consequently, I find that the Noticee is liable to be imposed with penalty under both Sections 15EB and 15HA of the SEBI Act.

27. I note that Section 15J of the SEBI Act provide for factors which are required to be considered for adjudging quantum of penalty. Section 15J of the SEBI Act reads 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.”

28. As observed above, I note that the Noticee received total credit of amount to the tune of Rs.1,23,92,438 /- (Rupees One Crore, Twenty-Three Lakhs, Ninety-Two Thousand, Four Hundred and Thirty-Eight Only) in the said bank accounts of Axis Bank and HDFC Bank, respectively, as advisory fees. These being the proceeds of an illegal activity, are liable to be refunded to the respective clients.

DIRECTIONS:

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

- (a) 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.
- (b) The Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one newspaper in vernacular language with wide circulation, detailing the modalities for refund, including the details

of contact person such as name(s), address(es) and contact detail(s) of person(s) to be approached for refund, within 15 days from the date of receipt of this order;

- (c) The repayments to the complainants/investors shall be effected only through electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- (d) The Noticee is prohibited from selling his assets, properties including mutual funds/shares/securities held by him in demat and physical form except for the purpose of effecting 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 complainant/investors who were availing the investment advisory services from the Noticee;
- (e) After completing the aforesaid repayments, the Noticee shall file a report of such completion with SEBI addressed to the “Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051”, within a period of 15 days, after expiry of four months from the date of public notice, as directed above, duly certified by an independent Chartered Accountant and the direction at para 29 (a) above shall cease to operate upon filing of such report;
- (f) The remaining balance amount shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/complainants/investors who were availing the investment advisory services from the Noticee. Thereafter, remaining amount, if any, will be deposited in the ‘Investors Protection and Education Fund’ maintained by SEBI;
- (g) In case of failure of the Noticee to comply with the aforesaid directions in sub-paragraph (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 Noticee is debarred from accessing the securities market, directly or indirectly and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two years from the date of this order or till the date of filing of report, as directed in para 29(d) above, whichever is later;
- (i) The Noticee shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 29(f) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws;
- (j) The Noticee is hereby imposed with penalty of Rs.5,00,000/-(Rupees Five Lakhs Only) under Section 15HA of the SEBI Act and Rs.1,00,000/- (Rupees One Lakh Only) under Section 15EB of the SEBI Act;
- (k) The Noticee shall remit / pay the said amount of penalty, within a period of forty-five (45) days from the date of receipt of this order, 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.

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

31. It is clarified that the direction for refund as given in Para 29(a) above, does not preclude the complainants/investors to pursue the other legal remedies available to them under any other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

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

33. A copy of this order shall be sent to the Noticee, all the recognized Stock Exchanges, the relevant banks, Depositories, Registrar and Transfer Agents of Mutual Funds and BSE Administration and Supervision Ltd., to ensure that the directions given above are strictly complied with.

Date: December 29, 2023

Place: Mumbai

**G RAMAR
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**