

QJA/AA/WRO/WRO/22645/2022-23
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) SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013

In respect of:

Name of Noticee	PAN
M/s. Kuber Capital (Proprietor – Mr. Chandrika Prasad) 119, Sharda Nagar, ITI Karmeta B/h Propesar Colony, Gram Karmeta Jabalpur - 482001	BTGPM3916H

In the matter of Unregistered Investment Advisory Services by M/s. Kuber Capital (Proprietor – Mr. Chandrika Prasad)

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”), pursuant to receipt of a complaint against M/s Kuber Capital (hereinafter referred to as “Noticee/ Kuber”) which is a sole proprietorship of Mr. Chandrika Prasad, had conducted an examination into its activities, to ascertain the veracity of the complaint and to determine whether there has been any violation of the provisions of Securities and Exchange Board of India, 1992 (“SEBI Act, 1992”) and the Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 (“IA Regulations”) and any other Rules or Regulations made thereunder, by the Noticee.
2. From the examination of the aforesaid complaint, KYC and other documents, it was, *prima facie*, found that the Noticee has been providing investment advisory services without obtaining a certificate of registration from SEBI thereby violating Section 12 (1) of the SEBI Act, 1992 read with Regulation 3 (1) of the IA Regulations, 2013.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice dated July 29, 2022 (hereinafter referred to as “SCN”) was issued to the Noticee calling upon it to show cause as to why suitable directions under Sections 11(1), 11(4), 11(4) and 11B (2) of the SEBI Act including imposing monetary penalty and direction to refund advisory fees collected from investors should not be issued against the Noticee for the alleged violations. The following documents were enclosed as annexures to the SCN:

Table A

Annexures to SCN	
Annex. No.	Particulars
A	Copy of the complaint received from the complainant.
B	Copy of the ICICI bank account statement bearing account no. 019805008254
C	Copies of the WhatsApp chat, as provided by the complainant
D	Letters issued by SEBI dated August 02, 2021 and August 12, 2021 seeking information regarding details of clients who have availed investment advisory services from the Noticee and also the amount collected from them.

4. The SCN has *inter alia* alleged the following:
- (a) A complainant had opened a ‘trading account’ with the Noticee and deposited a sum of Rs. 14,000/- in its ICICI Bank account. The complainant has further alleged that he has earned a profit of Rs.1,99,400/- through his trading, however, when he asked the Noticee for pay out, the Noticee stopped responding to his calls and messages.
- (b) It is alleged that the Noticee’s bank account statement contained transaction with narrations such as “trade”, “to trade”, “for trade”, “trading”, “offline trading”, “for trading”, “for share trading”, “fund for trade”, “invest”, “investment”, “for investment”, “share” etc. which indicate that the bank account was used by the Noticee for receiving money for unregistered investment advisory activities.
- (c) Based on the WhatsApp chat, it is observed that the Noticee provided the following trading tips to the complainant:

Table No. 1

Date	Tips
22.12.2020	Buy 50 shares JINDALSTEL@255.80 Sell 50 Shares JINDALSTEL@261.80

	Profit/ loss=+300/-
23.12.2020	Buy 100 Shares GRAPHITE @ 291 Sell 100 Shares GRAPHITE @ 295 Profit/ loss=+400/-
07.01.2021	Buy 100 Shares ADANI PORTS @ 509 Sell 100 Shares ADANI PORTS @ 513 Profit/ loss=+400/-
13.01.2021	Buy 100 Shares ADANI PORTS @ 525 Sell 100 Shares ADANI PORTS @ 535 Profit/ loss=+1000/-
14.01.2021	Buy 100 Shares SUVEN PHAR @ 485 Sell 100 Shares SUVEN PHAR @ 505 Profit/ loss=+2000/-
20.01.2021	Buy 500 Shares RELIANCE @ 2040 Sell 500 Shares RELIANCE @ 2053 Profit/ loss=+6500/-
20.01.2021	Buy 200 Shares LTTS @ 2610 Sell 200 Shares LTTS @ 2245 Profit/ loss=+7000/-
25.01.2021	Sell 50 Shares TATA ELXI @ 2510 Buy 50 Shares TATA ELXI @ 2475 Profit/ loss=+1750/-
29.01.2021	Buy 200 Shares ADANI PORTS @ 535 Sell 200 Shares ADANI PORTS @ 545 Profit/ loss=+2000/-

(d) Apart from transfer of funds from other accounts, transfer of funds through the following modes could be observed during the period of examination:

Table No. 2

Mode	No of transactions	Amount Rs.
UPI	658	1,01,47,723
BIL/INFT	89	46,20,486
IMPS	348	74,48,386
Others	25	35,50,889
Total		2,57,67,484

(e) Since the Noticee has not provided any details with regard to the amount collected from clients in connection with his investment advisory activities in spite of seeking the same repeatedly through letters dated August 02, 2021 and August 12, 2021, the amount reflected in the Noticee's bank account statement as indicated above have been

considered as amount collected by the Noticee towards the investment advisory activities.

(f) From the aforesaid, it is observed that the Noticee is providing Investment Advisory services. Further, examination of records available with SEBI revealed that the Noticee is not registered with SEBI in any capacity. Therefore, it is alleged that the Noticee has engaged in the activities of an 'investment adviser' as defined under regulation 2 (m) of the IA Regulations, 2013 and by not getting the registration as required under the Regulations, the Noticee has violated Regulation 3(1) of the said regulation, read with section 12(1) of SEBI Act.

5. A Supplementary SCN dated October 25, 2022 (hereinafter referred to as "Supplementary SCN") was issued to the Noticee stating that the aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15 EB of the SEBI Act, 1992 and the said section was reproduced therein. The Noticee was called upon to show cause as to why suitable directions under sections 11(1), 11(4), and 11B (1) of the SEBI Act should not be issued against it for the alleged violations in terms of SCN dated July 29, 2022. The Noticee was further called upon to show as to why inquiry should not be held against it in terms of Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed under Section 11 (4A) and 11 B (2) read with Section 15 EB of the SEBI Act, 1992 for violation of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013. The said Supplementary SCN was served on the Noticee on November 04, 2022.
6. The Noticee vide letter dated August 23, 2022 replied to the SCN and stated as under:

"1. I am in receipt of your aforementioned Show Cause Notice on August 2, 2022.

2. In the Show Cause Notice, you have mentioned a complaint against me regarding one Mr. Amit Kumar Tiwari. A copy of his email is also attached along with the SCN received by me.

3. At the outset I would like to clarify that total amount as received from Mr. Amit Kumar Tiwari was refunded to him including an additional amount for damages as claimed by him, to avoid any further litigation.

- 4. It is alleged that a total of Rs. 2,57,67,484/- has been collected as investment advisory services. In this regard it is submitted that the total amount includes inter-account deposits/cash deposits.*
- 5. There is no other compliant pending against me before SEBI or any other forum.*
- 6. I have no mala fide intention, what so ever to defraud any person in name of advisory services or in other matter.*
- 7. I am currently unemployed and hardly meeting my ends.*
- 8. I do not intend to participate in any securities market related business activity in foreseeable future as well.*
- 9. I humbly request you to kindly consider my submissions and assume a lenient approach towards me considering my bona fide.*
- 10. I would request you to kindly give me an opportunity of being heard before the appropriate forum so that I can bring forth my bona fide.”*

7. An opportunity of hearing before the Competent Authority was granted to the Noticee on December 07, 2022 which was communicated vide letter dated November 10, 2022. However, vide email dated December 06, 2022, Advocate Mr. Manish Gupta, Authorised Representative of the Noticee (hereinafter referred to as “Authorized Representative/ AR”) requested an adjournment and sought 2 weeks’ time to file a reply and argue the matter. The email also included a copy of a Vakalatnama executed by Mr. Chandrika Prasad in favour of the AR. The AR further requested, that a date before December 20, 2020 or after January 03, 2023 may be granted. In view of the same, hearing in the matter was scheduled on December 14, 2022 which was communicated vide email dated December 06, 2022.
8. Hearing in the matter was scheduled on December 14, 2022. The Noticee’s authorized representative (hereinafter referred to as ‘AR’), Advocate Mr. Manish Gupta appeared before the undersigned and *inter alia* made the following submissions:
 - *The AR read from the complaint filed with SEBI (Annexure A to SCN) and stated that the account number mentioned by the complainant is alphanumeric whereas bank account numbers usually contain only numbers. Further, the AR argued that complainant has said that he has opened a “trading account” with Kuber Capital, and that he has nowhere alleged that he was receiving investment advice.*
 - *The AR also stated that the complainant was dealing with one Mr. Vinay Kumar from Kuber Capital but there was no such employee working for Kuber Capital.*
 - *The Noticee, Kuber Capital was in the Hundi Chitti business. Furthermore, the Noticee had a separate business named “Edutech House” which provided educational courses in Technical Analysis, Fundamental Analysis. When asked whether the Noticee was*

qualified to provide such courses, the AR replied that one Mr. Vikram Mishra was hired by the Noticee to teach the said courses.

- The AR also submitted that the narrations such as “for trade”, “share” etc. appearing in the bank account statement pertained to the fees paid by the course participants. The AR was advised to provide proof such as receipts, course completion certificates etc. in furtherance of this argument which the AR undertook to submit by the end of the day. The AR was also advised to furnish the ITR filed by the Noticee in this regard.*
- The grievances of the complainant, Mr. Amit Kumar Tiwari, have been resolved.*
- The AR relied on the definition of “investment advice” under Regulation 2(1)(l) of the Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 to argue that the said definition states that the term “shall” include financial planning, and that the complainant has neither alleged nor was the Noticee providing any financial planning services.*
- The AR requested that he may be granted time till the end of the day i.e. December 14, 2022 to provide his post hearing submissions and the same was granted.*

9. Post hearing, submissions were received on December 14, 2022 itself, however, the Noticee has failed to provide relevant proof such as receipts, course completion certificates etc. in furtherance of his argument that he was coaching pupils on Fundamental Analysis and Technical Analysis. The Noticee has also failed to furnish the ITR filed by it.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have considered the material available on record i.e. the SCN, oral and written submissions including the Noticee’s reply dated August 23, 2022 and based on the aforesaid, I note that the issue for consideration before me is whether the Noticee has been 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.
11. I note that SEBI is in receipt of a complaint (Annexure A to SCN) from the complainant, Mr. Amit Kumar Tiwari wherein he has alleged that he had opened a trading account with the Noticee and deposited Rs. 14,000/- in its bank account maintained with the ICICI Bank Limited (hereinafter referred to as “ICICI Bank”). I note from Annexure C to the SCN that the QR scan code for making payment was shared by one “Mr. Vinay” from Kuber Capital and thereafter payment was made by the complainant on December 22, 2020. Based on the

details provided by the complainant, SEBI was able to trace the bank account held with ICICI Bank bearing account no. 019805008254 in the name of “Kuber Capital”. The details of the account are as under:

Table no. 3

Name of the account holder	Kuber Capital
Account Number	019805008254
Name of the authorized signatory	Mr. Chandrika Prasad (Proprietor of Kuber)
Account opening date	November 30, 2020
Statement period	November 30, 2020 to May 15, 2021
Current status of the account	Account closed on 15/5/2021

12. The SCN has also stated that the first payment into the said account was made by the complainant on December 22, 2020 as reflected in the said bank account statement. I note from Annexure C to the SCN wherein the complainant has provided screenshot of payment to UPI ID: “kuber7879@icici” and account no. “**8254”, and the bank statement at Annexure B, that the same stands established.

13. I also note from Table no. 1 and the WhatsApp chat history between the Noticee and the complainant (Annexure C to SCN) that the following advice to trade in securities was provided by the Noticee to the complainant.

Table No. 1

Date	Tips
22.12.2020	Buy 50 shares JINDALSTEL@255.80 Sell 50 Shares JINDALSTEL@261.80 Profit/ loss=+300/-
23.12.2020	Buy 100 Shares GRAPHITE @ 291 Sell 100 Shares GRAPHITE @ 295 Profit/ loss=+400/-
31.12.2020	Buy 200 Shares GRAPHITE @ 308 Sell 200 Shares GRAPHITE @ 311 Profit/ loss=+600/-
07.01.2021	Buy 100 Shares ADANI PORTS @ 509 Sell 100 Shares ADANI PORTS @ 513 Profit/ loss=+400/-
08.01.2021	Buy 100 Shares ADANIE @ 517 Carry Forward
13.01.2021	Buy 100 Shares ADANI PORTS @ 525 Sell 100 Shares ADANI PORTS @ 535 Profit/ loss=+1000/-

14.01.2021	Buy 100 Shares SUVENPHAR @ 485 Sell 100 Shares SUVENPHAR @ 505 Profit/ loss=+2000/-
20.01.2021	Buy 500 Shares RELIANCE @ 2040 Sell 500 Shares RELIANCE @ 2053 Profit/ loss=+6500/-
20.01.2021	Buy 200 Shares LTTS @ 2610 Sell 200 Shares LTTS @ 2245 Profit/ loss=+7000/-
25.01.2021	Sell 50 Shares TATAELXI @ 2510 Buy 50 Shares TATAELXI @ 2475 Profit/ loss=+1750/-
29.01.2021	Buy 200 Shares ADANIPTS @ 510 Carry Forward
01.02.2021	Buy 200 Shares ADANIPTS @ 535 Sell 200 Shares ADANIPTS @ 545 Profit/ loss=+2000/-
05.02.2021	Sell 900 Shares RBLBANK @ 244 Buy 900 Shares RBLBANK @ 242 Profit/ loss=+1800/-
05.02.2021	Sell 400 Shares MUTHOOTFIN @ 1171 Buy 900 Shares MUTHOOTFIN @ 1166 Profit/ loss=+2000/-
05.02.2021	Buy 500 Shares JKCEMENT @ 2270 Carry Forward

14. The Noticee has submitted vide written submissions dated December 14, 2022 that the complainant was dealing with one, Mr. Vinay Kumar who was neither an employee nor connected to the Noticee in any manner. The Noticee has also stated that it has no connection with the alleged chats nor the phone number stated therein belongs to him, and has stated that the said chats are fake. I note from Annexure C to the SCN i.e. the Whatsapp Chat between the complainant and the Noticee, that the complainant had saved the number of the representative of Kuber Capital who approached him on his mobile phone as “Vinay Kuber Capital”. I also note that the complainant received the details of the bank account held by Kuber Capital with ICICI Bank and a QR scan pertaining to the said account from the said mobile number. I note that the complainant after receiving the said account details transferred an amount of Rs. 2,000/- into the said bank account of Kuber Capital. I note that the Noticee has not disputed the veracity of the account number mentioned in the SCN, the statement of bank account enclosed as Annexure B to the SCN and the payment

received from the complainant. Further, in response to the SCN, the Noticee vide reply dated August 23, 2022 has stated that the total amount as received from Mr. Amit Kumar Tiwari was refunded to him including an additional amount for damages as claimed by him, to avoid any further litigation. In view of the same, I am unable to accept the Noticee's submission, at this point of time, denying the true nature of the Whatsapp chats. Therefore, I find that the Noticee was providing buy and sell recommendations i.e. advice to deal in securities, through Whatsapp to its investors/ clients.

15. I have perused the bank account statement (Annexure B to the SCN) of the Noticee's account with ICICI Bank, and I note that the credit entries into the account carry narrations such as "trade", "to trade", "for trade", "trading", "offline trading", "for trading", "for share trading", "fund for trade", "invest", "investment", "for investment", "share" etc., which indicate that the bank account was used by the Noticee for receiving money for unregistered investment advisory activities. The SCN has provided sample of such credit entries which is reproduced as under:

Table No. 4

Bank Name	Account Number	Date of transaction	Narration	Credit Amount (in Rs.)
ICICI Bank	019805008254	31-12-2020	BIL/INFT/000008831144/ share/	10000
ICICI Bank	019805008254	31-12-2020	MMT/IMPS/036617680976/INF share KUB/BT MARKETI t	4500
ICICI Bank	019805008254	31-12-2020	BIL/INFT/000009143390/ share/	6500
ICICI Bank	019805008254	04-01-2021	UPI/100410505856/ share/ 9955021825@sb i/State Bank O	17000
ICICI Bank	019805008254	05-01-2021	UPI/100511517279/ share/ 9955021825@sb i/State Bank O	10000
ICICI Bank	019805008254	06-01-2021	UPI/100612024956/ share/ 9955021825@sb i/State Bank O	22000
ICICI Bank	019805008254	11-01-2021	UPI/100913805137/ Shareinvestmen /sajan biddappa@o/H	10000
ICICI Bank	019805008254	25-01-2021	VIN/PAYTM /202101251333/102508699620/	Debit Transaction
ICICI Bank	019805008254	17-02-2021	MMT/IMPS/104812636948/ For share tradi /KUNAL SAMA/A	10000
ICICI Bank	019805008254	01-03-2021	MMT/IMPS/105917287031/ For share tradi /KUNAL SAMA/A	5000
ICICI Bank	019805008254	22-03-2021	UPI/108112079819/ Share /dharmendraray9 8/State Bank	5000

16. I note that the Noticee's AR during the course of personal hearing submitted that the Noticee had a business named "Edutech House" which provided educational courses in Technical Analysis and Fundamental Analysis in securities market. When asked whether the Noticee was qualified to provide such courses, the AR replied that one Mr. Vikram Mishra was hired by the Noticee to teach the said courses. The AR also submitted that the narrations such as "for trade", "share" etc. appearing in the bank account statement pertained to the fees paid by the course participants. The AR was advised to provide proof such as copies of fee receipts issued to students, course completion certificates etc. in furtherance of the said argument, which the Noticee has failed to adduce. The AR was also advised to furnish the ITR filed by the Noticee, which has not been submitted till date. Further, from the narrations in the bank account statement, I note that there are debit transactions wherein the narration "payout" is mentioned. I am unable to appreciate the kind of "payout" that may be warranted for educational courses or in the property brokerage business. However, the complainant has referred to "payout" in his Whatsapp Chat and his email dated March 10, 2021 to SEBI (Annexure A to the SCN) wherein he refers to "payout" of Rs. 9,000/- received from the Noticee, which I consider is a refund that the complainant received from the Noticee, and which has been admitted by the Noticee vide his letter dated August 23, 2022. Therefore, I am unable to accept the contention of the Noticee that the narrations "share" "for investment" etc. were in connection with his education business.

Contradictions in the Noticee's submissions

17. The Noticee's AR during the course of hearing submitted that Mr. Chandrika Prasad is carrying on the business of a broker in a Hundi Chitthi business. However, I note that in his written post hearing submissions dated December 14, 2022, the Noticee has stated that he is a property broker in his individual capacity and his firm provides educational courses on Fundamental and Technical Analysis in securities market.

18. In response to the SCN, the Noticee vide reply dated August 23, 2022 has stated that the total amount as received from the complainant, Mr. Amit Kumar Tiwari was refunded to him including an additional amount for damages as claimed by him, to avoid any further litigation. However, the Noticee at paragraph no. 8 of its post hearing submissions dated

December 14, 2022 has stated that its employee, Mr. Vikram Mishra has informed that the complainant has made a false complaint owing to an internal dispute and that the amount deposited by the complainant was refunded personally by Mr. Vikram Mishra and that the Noticee had no connection with the payment. I note that the complainant in his email to SEBI (Annexure A to the SCN) had stated that the Noticee had transferred Rs. 9,000/- to his account on March 06, 2021 which is confirmed through the bank account statement at Annexure B to the SCN. Furthermore, even assuming that the said complaint is falsely made, the Noticee is still not able to explain the payment made into the account of the Noticee, and the subsequent buy and sell recommendations provided to the complainant in lieu of the said consideration.

19. The preceding paragraphs show that the Noticee's submissions are contradictory and therefore, relying on its statement in the absence of proof is not possible. I note that SEBI vide letter dated August 02, 2021 and reminder letter dated August 12, 2021 (Annexure D to SCN) advised the Noticee to provide information regarding details of clients who had availed investment advisory services from him and also the amount collected from them. Furthermore, copy of the said letters were also sent to the Noticee by e-mail. However, the Noticee has failed to furnish the details as sought by SEBI.

20. I note that 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:"

21. From a collective reading of (a) the narrations in the bank account statement of the Noticee which included the following phrases, "to trade", "for trade", "trading", "offline trading", "for trading", "for share trading", "fund for trade", "invest", "investment", "for investment", "share" etc.; (b) the buy and sell recommendations provided to the complainant through the Whatsapp Chats and (c) reply of the Noticee dated August 23, 2022, I find that the Noticee was providing "investment advice".

22. The Noticee's AR during the hearing as well as through post hearing submissions dated December 14, 2022 has stated that on perusal of the definition of "investment advice" as appearing in the IA Regulations, it is understood that the term "investment advice" necessarily includes financial planning i.e. financial planning is an essential element of the definition of "investment advice". It is the Noticee's case that from the SCN and its annexures, there is no allegation of the Noticee providing financial planning services.

23. I find it pertinent to note the observations of Lord Watson in *Dilworth v. Commr. Of Stamps*¹ wherein it was stated that the word 'include' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute and therefore, "*these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.*" A similar observation was made by the Hon'ble Supreme Court in *Bharat Cooperative Bank (Mumbai) Ltd. v. Employees Union*², which is reproduced as under:

"When in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition it is a "hard-and- fast" definition and no meaning other than that which is put in the definition can be assigned to the same. On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise."

24. The definition of "investment advice" has two parts, namely, where it is defined to (a) **mean** 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 (b) to **include** financial planning. In this regard, reliance may be placed on the "Concept Paper on the Regulation of Investment Advisors" published on September 26, 2011. The said Concept Paper noted that the financial products

¹ (1899) AC 99.

² (2007) 4 SCC 685.

distribution space was fraught with conflicts between manufacturers of financial products like banks, mutual funds, etc. and the distributors which sell these products who call themselves by various names such as agents, financial advisors, financial planners, etc. It further apprehended that such distributors/ financial planners may be partial towards manufacturers who would be the best paymasters. It is in this context that “financial planning” was included in the definition of “investment advice”.

25. In view of the above, I note that the intention of the legislature while drafting the definition of “investment advice” was for the word to mean any 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, however, in order to include financial planning in its fold, the phrase “shall include financial planning” was introduced. By stating that the legislature intended to make financial planning a necessary ingredient of “investment advice” would mean giving the word an interpretation which was never intended.
26. Furthermore, I note that the Noticee was providing investment advice with respect to purchasing and selling of securities through Whatsapp, and also received consideration in lieu of the same. The Noticee’s submission that the payments in his bank account were in connection with his education business has already been dealt with in the earlier paragraphs and has been found to be devoid of merit. In view of the WhatsApp chat history between the complainant and the Noticee, I note that the recommendation to buy/ sell securities provided by the Noticee is covered under the definition of “investment advice”. Furthermore, from the narration column of transactions in the ICICI Bank account statement, indicates that the money received from individuals was in the nature of fees in lieu of investment advice provided by it. The definition of “investment adviser” under Regulation 2(1)(m) of the IA Regulations states 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 those entities which are

holding themselves out as investment advisers, such entity will be covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations. Therefore, I find that the Noticee through its proprietor, Mr. Chandrika Prasad, was engaged in the business of providing investment advice to its clients, for consideration, and thus, is acting as an investment adviser, as defined under Regulation 2(1) (m) of the IA Regulations.

27. 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. The said provisions are reproduced as under:

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 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:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation (2) within the said period of six months, till the disposal of such application.”

28. 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.

29. 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.

30. In view of above, I note that the activities of the Noticee (Prop. Mr. Chandrika Prasad), show that it was acting as an investment adviser. However, neither the Noticee nor its proprietor were registered with SEBI in the capacity of Investment Advisor. Hence, I find that these activities were being carried out by the Noticee firm without obtaining the necessary certificate of registration as an investment adviser and therefore, the Noticee has violated Section 12(1) of the SEBI Act along with Regulation 3 of the IA Regulations.

31. The SCN has stated that as the Noticee had not provided any details with regard to the amount collected from clients in connection with his investment advisory activities in spite of repeated letters issued by SEBI seeking such information, the amount reflected in its bank account statement as indicated above are considered as amount collected by the Noticee towards the investment advisory activities. The details of the funds transferred into the ICICI Bank account of the Noticee are as under.

Table No. 2

Mode	No of transactions	Amount Rs.
UPI	658	1,01,47,723
BIL/INFT	89	46,20,486
IMPS	348	74,48,386
Others	25	35,50,889
Total		2,57,67,484

32. The Noticee in his reply dated August 23, 2022 has stated that the said amount of Rs. 2,57,67,484/- also includes inter-account deposits/cash deposits. However, the Noticee has

not adduced any evidence in relation to the said claim. Therefore, I am inclined to accept the amount arrived at and mentioned in the SCN i.e. Rs. 2,57,67,484/-.

33. The SCN also calls upon the Noticee to explain as to why appropriate penalty be not imposed upon it under Section 15EB of the SEBI Act, 1992 for the violations alleged in the SCN. The relevant extract of Section 15EB 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.”

34. I note that the allegation that the Noticee has acted as an investment adviser without obtaining a certificate of registration from SEBI has been clearly established in the preceding paras and therefore, violated Regulation 3(1) of the IA Regulations read with Section 12 of the SEBI Act. In view of the same, I find that the penalty under Section 15EB of the SEBI Act, 1992 is clearly attracted.

35. 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.”

36. As discussed in the aforesaid paragraphs, I note that a total of Rs. 2,57,67,484/- has been received by the Noticee in the bank accounts for the investment advisory services provided by it. Thus, in the light of the findings in the preceding paragraphs, I am of the considered view that the Noticee is liable for refund of the aforementioned amount collected as an unregistered investment adviser in addition to monetary penalties which are attracted for the said violations under Sections 15EB of the SEBI Act.

DIRECTIONS

37. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4) and 11B (1), 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 Noticee, Kuber Capital (Proprietor: Mr. Chandrika Prasad) shall, within a period of three (3) months from the date coming into force of this direction, refund the money received from any complainants/ investors/ clients, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;
- (b) The Noticee, Kuber Capital through its proprietor 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 Noticee along with its proprietor 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 Noticee, as directed in this order, from the bank accounts of 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 completion of three months from the coming into force of the directions at para 37(a) and (b) above, duly certified by an independent Chartered Accountant and the direction at para 37(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 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 are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of one (1) year from the

date of this order or till the expiry of one (1) year from the date of completion of refunds to complainants/ investors as directed in paragraph 37 (a) above, whichever is later;

- (i) The Noticee is hereby imposed with a penalty of Rs. 1,00,000/- (Rupees one lakh only) under Section 15EB of the SEBI Act, 1992 and further directed to pay the penalty within a period of forty-five (45) days, from the date of receipt of this order;
- (j) The Noticee shall remit / pay the said amounts of penalty, either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to “The Division Chief, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, 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)	

- (k) The Noticee firm shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 37 (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.

38. The direction for refund, as given in paragraph 37(a) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

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

40. A copy of this order shall be sent to the Noticee through its proprietor Mr. Chandrika Prasad, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with.

Sd/-

Date: December 30, 2022

Place: Mumbai

Dr. ANITHA ANOOP

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA