

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/57626	Date: July 19, 2023
Circular Ref. No: 172/2023	

To All NSE Members

Sub: SEBI Order in the matter of unregistered investment advisory by Vivan Equities, Proprietor Ankush Patidar

SEBI vide its Order no. QJA/KS/WRO/WRO/28222/2023 dated July 19, 2023 has hereby restrained following entity 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 32(h) of the order, whichever is later.

Sr. No.	Name of the Entity	PAN
1	M/s Vivan Equities (Proprietor: Ankush Patidar)	BUWPP1801K

This Order shall come into force with immediate effect.

The detailed order is available on SEBI website (<http://www.sebi.gov.in>).

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page at the below link:

<https://www.nseindia.com/regulations/member-sebi-debarred-entities>

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in



National Stock Exchange of India

For and on behalf of

National Stock Exchange of India Limited

**Sandesh Sawant
Senior Manager**

**ANNEXURE: - SEBI Order in the matter of unregistered investment advisory by Vivan
Equities, Proprietor Ankush Patidar**

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 read with Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	M/s Vivan Equities (Proprietor: Ankush Patidar)	BUWPP1801K

In the matter of unregistered Investment Advisory by Vivan Equities, Proprietor: Ankush Patidar.

BACKGROUND

- Securities and Exchange Board of India (“SEBI”) received complaints from Mr.Hemant Deval (“complainant”) vide emails dated July 22, 2016 and July 25, 2016 against M/s. Vivan Equities, which is the sole proprietorship concern of Mr.Ankush Patidar (“Noticee”). The complainant also made following complaints against the Noticee on SEBI Complaints Redressal System (‘SCORES’): -

Table No. 1

Sr. No.	Complain No.	Date
1	SEBIE/MP16/0000407/1	June 28, 2016
2.	SEBIE/UC16/0000022/1	July 20, 2016
3.	SEBIE/MP16/0000495/1	July 20, 2016
4	SEBIE/UC16/0000023/1	July 20, 2016
5	SEBIE/UC16/0000024/1	July 22, 2016
6.	PMOPG/E/2017/0079185	February 09, 2017

2. The aforementioned complaints inter-alia alleged that the Noticee is “*running a fraud and illegal firm, a fraud website www.vivanequities.com having address 123, abc, Indore, M.P*”. The complaint also mentioned that the complainant made payment of Rs. 20,000 on May 30, 2016 to the Noticee’s ICICI bank account number 09450xxx8099 against services provided by the Noticee and also enclosed a receipt issued by the Noticee against the receipt of the said payment.
3. Pursuant to the receipt of the said complaints, SEBI conducted examination into the activities of the Noticee to ascertain whether there has been any violation of provisions of Securities and Exchange Board of India, 1992 (“**SEBI Act**”) and Regulations made thereunder.
4. During the course of the examination, SEBI found that the Noticee was holding bank account with ICICI bank and Axis bank. SEBI sought details such as KYC, Account Opening Form (AOF) and bank statement from ICICI Bank and Axis Bank in respect of the Noticee’s bank accounts. The Noticee’s Axis bank account contained credit entries from PayU payments private Limited (“**PayU**”). From PayU, SEBI sought information such as KYC document, copy of agreement, transaction statement, etc. in respect of Merchant Identification Number (“**MID**”) linked with the Noticee’s Axis Bank account.
5. SEBI vide letter dated December 13, 2021, inter-alia, stating that the Noticee appears to be engaged in carrying unregistered investment advisory activities without obtaining certificate of registration from SEBI and advised the Noticee to provide information such as Client names, amounts collected as fees, details of bank accounts in which account was collected, etc. Despite the due service of the said letter, the Noticee failed to respond to the said letter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. On the basis of findings of the examination, SEBI issued show cause notice dated March 28, 2023 (“**SCN**”) to the Noticee which, inter-alia, stated as follows: -

- a. The complainant – Hemant Deval made a payment of Rs. 20000/- to the Noticee towards one-year advisory service for a product called Stock Cash+Stock Future+Option+HNI.
- b. As per the details obtained from ICICI Bank, Mr. Ankush Patidar held savings bank account number 09450xxx8099 with ICICI Bank. During the period from December 14, 2015 to October 10, 2022, amount of Rs. 89,80,231/- is credited in ICICI bank account of the Noticee. There is a credit of Rs. 5000/- on May 30, 2016 with narration “TRFR FROM: HEMANT DEVAL”. The date of transfer of amount of Rs. 5,000/- in the said account was on the same date as mentioned on the invoice provided by complainant.
- c. As per the details obtained from Axis Bank, Mr. Ankush Patidar held savings bank account number 9140100xxxx4334 with Axis Bank. During the period from December 23, 2014 to October 03, 2022, amount of Rs.39,22,414/- is credited in Axis bank account of the Noticee.
- d. The website of the Noticee, www.vivanequities.com, was found to be not active. From the archived pages of the said website, it is noted that the Noticee claimed itself to be the most prominent stock and commodity research house engaged in providing advisory services and offering 25 different advisory services such as Intraday Cash, HNI Cash, Nifty Future, HNI Future, Intraday Future, HNI Option, Nifty Option, Commodity Agri, MCX Premium, HNI MCX, Currency, etc.
- e. The aforesaid advisory services/products were offered by the Noticee for different time periods i.e. monthly, quarterly, half yearly, and yearly. The minimum fees charged for a product was Rs. 5,000/- and the maximum fees charged for the product was Rs. 3,05,000/-.

- f. The Noticee mentioned 6 products i.e. Future premium, Stock cash, Stock Future, Stock Option, Commodity and Cash Premium under Past Performance.
- g. The Noticee`s address was mentioned as 123, Abc Indore MP, Phone no. given was 0731-4001598, and the email ID mentioned was info@vivanequities.com. The said contact details of the Noticee matched with those provided by the complainant in his complaint sent vide email dated July 25, 2016.
- h. The Noticee claimed to have 100 employees engaged in providing advisory services to 542 clients.
7. Based on the facts stated in the said SCN, it was alleged that the Noticee was engaged in the activities of an investment adviser without obtaining the requisite registration from SEBI, as required in terms of Section 12(1) of the SEBI Act read with Regulation 3(1) of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("**IA Regulations**"). Further, it was alleged that the amounts credited in the bank accounts of the Noticee was received as fees towards the services rendered as an investment advisor. The Noticee was called upon to show cause as to (i) why suitable directions for refund of fees of Rs.1,29,02,645/-(Rupees One Crore Twenty Nine Lakh Two Thousand and Six Hundred Forty Five Only), taken towards investment advisory activity, should not be issued against the Noticee and (ii) why penalty under Section 15HB and 15EB of SEBI Act should not be issued against the Noticee for the aforesaid violations.
8. SCNs dated March 28, 2023 was served on the Noticee through speed post at House number 43, Ward No. 4, Patel Marg, Kukshi, Dhar, Madhya Pradesh - 454331, mentioned as address of Ankush Patidar in his Aadhar, KYC documents of ICICI bank and Axis bank. In response to the SCN, no reply was received from the Noticee.

9. Subsequently, a Supplementary Show Cause Notice dated June 07, 2023 (“**SSCN**”) was issued to the Noticee which, inter-alia, stated as follows: -
- a. PayU vide e-mails dated February 21, 2023 and February 20, 2023 submitted that PayU MID of Legal Name Mr. Ankush Patidar was 5331406 bearing PAN: BUWPP1801K and website address www.vivanequities.com.
 - b. A Service Agreement was executed on January 15, 2016 between Mr. Ankush Patidar and PayU. As per clause 1.1 (w) of the said agreement, the merchant Site domain name is www.vivanequities.com, which is controlled, operated and owned by the merchant, Mr. Ankush Patidar, to enable its customers to view offered products and carry out transactions for purchase of such products. As per clause 1.1 (v) of the said agreement, the merchant bank account linked to PayU is Axis Bank Account number 9140100xxxx4334 and the account holder name is Mr. Ankush Patidar. As per Schedule B of the said agreement, the business category of the services being offered by Mr. Ankush Patidar through the website www.vivanequities.com is Stock Advisory Services.
 - c. PAYU vide its email dated February 22, 2023 submitted the transaction statement pertaining to the MID 5331406 and merchant name Mr. Ankush Patidar which showed that the payments were received by Mr. Ankush Patidar for advisory services.
 - d. Mr. Ankush Patidar was using his Axis Bank Account number 9140100xxxx4334 to receive payments for advisory services. On examination of bank account statement of Mr. Ankush Patidar’s ICICI bank account 09450xxx8099, it was observed that there were some more credits (other than of Mr. Hemant Deval), the narrations of which showed that Mr. Ankush Patidar, in addition to his Axis Bank account, was also using his ICICI Bank account no. 09450xxx8099 to take fees for carrying out unregistered advisory activities. Such transactions are as under:

Table No. 2

Bank Name	Account Holder Name	Account No.	IFSC Code	Date of Transactions	Narration	Credit Amount
ICICI Bank	Ankush Patidar	09450xxx8099	ICIC0001859	04/02/2016	BIL/000911472339/trading/NSP	3000
ICICI Bank	Ankush Patidar	09450xxx8099	ICIC0001859	23/02/2016	BIL/000922004171/fee/NSP	5000
ICICI Bank	Ankush Patidar	09450xxx8099	ICIC0001859	30/05/2016	Trfr From:Hemant Deval	5000
ICICI Bank	Ankush Patidar	09450xxx8099	ICIC0001859	16/02/2017	BIL/001149460762/Advisory/NSP	15000
ICICI Bank	Ankush Patidar	09450xxx8099	ICIC0001859	25/08/2020	UPI/023813316344/Fo r trading com/vikky0987@okici/l	5000
ICICI Bank	Ankush Patidar	09450xxx8099	ICIC0001859	29/08/2020	UPI/024216416562/Fo r share tradi/vikky0987@okici/l	6200

e. SSCN shall be treated as a part of the SCN dated March 28, 2023.

10. In the interest of natural justice, an opportunity for personal hearing was granted to the Noticee on May 26, 2023. In this regard, hearing notice dated May 19, 2023 was delivered to the Noticee through speed post. However, the Noticee did not appear for the hearing nor submitted any letter seeking adjournment of the said hearing. The Noticee was granted another opportunity of hearing on July 04, 2023. In this regard, SSCN cum hearing notice dated June 07, 2023 was served on the Noticee through speed post. In response to the SSCN cum hearing notice dated June 07, 2023, neither reply was received from the Noticee nor the Noticee appeared for the hearing.

11. I note that sufficient opportunities of filing reply to the SCN and SSCN and hearing have been given to the Noticee, however, the Noticee has failed to reply or to appear in hearings. Accordingly, the matter is proceeded ex-parte on the basis of the documents and information available on record.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have considered the material available on record including complaints, the SCN, SSCN, Bank statements, KYC documents, Account opening forms, transaction statement, service agreement.

13. I note that the allegation against the Noticee is that the Noticee acted as investment advisor without obtaining certificate of registration from SEBI, thereby the Noticee violated Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations. I note that following issues arise for consideration in the present case: -

- a. Whether the Noticee acted as an unregistered investment advisor in contravention of Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations?
- b. If answer to issue no. a is in the affirmative, what penalty and/or directions should be passed against the Noticee?

14. Before proceeding further, it is pertinent to refer to the relevant provisions of the SEBI Act and the IA Regulations which are reproduced hereunder: -

SEBI Act

Registration of stock brokers, sub-brokers, share transfer agents, etc.

Section 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."

IA Regulations

Regulation 2(1)(g)

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

Regulation 2(1)(l)

“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)

“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)

“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:”

15. 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.

16. I note that the Noticee through its website i.e. www.vivanequities.com claimed as follows: -

a. It is one the most prominent stock and commodity research house in India. It provides advisory services.

b. It is providing following services: -

“HNI Cash – In this service we take utmost care in deciding on levels of calls execution and profit booking, as traders with volume should get proper time to enter and exit the trades.

Cash premium – This service is designed for traders who want to get higher returns when compared with stock cash regular service.

Cash Plus – This service is special designed for those traders who want to trade once in a day with big target for big profit with calculated risk”.

c. It offered services with respect to Stock Market, Future Market, Option Market, Commodity Market, Currency Market and Combo services.

d. It offered 25 different advisory services such as Intraday Cash, HNI Cash, Nifty Future, HNI Future, Intraday Future, HNI Option, Nifty Option, Commodity Agri, MCX Premium, HNI MCX and Currency, etc., It called advisory service as product. The details of various products offered by the Noticee are as under: -

Table No. 3

Stock Market	Future Market	Option Market	Commodity Market	Currency Market	Combo Services
<ul style="list-style-type: none"> • Intraday Cash • Stock cash • BTST • Cash Positional • Cash Plus • Cash Premium • HNI Cash 	<ul style="list-style-type: none"> • Intraday Future • Nifty Future • Future Positional • Future Power • Future Plus • HNI Future 	<ul style="list-style-type: none"> • HNI Option • Option BTST • Nifty Option • Optional Positional • Option Call & Put 	<ul style="list-style-type: none"> • Commodity Agri • Precious Metal • Base Metal + Energy • MCX Premium • HNI MCX • IDR (Instant Data Result) Pack 	<ul style="list-style-type: none"> • Currency 	<ul style="list-style-type: none"> • Combo (cash+ future)

- e. Aforesaid advisory services were offered by the Noticee for different time periods i.e. monthly, quarterly, half yearly and yearly. The minimum fees charged for a product was Rs. 5,000/- and the maximum fees charged for the product was Rs. 3,05,000/-. Details of various fees charged for different products for different time period are tabulated below: -

Table No. 4 (amount in Rs.)

Advisory Service Package	Monthly	Quarterly	Half Yearly	Yearly
Intraday Cash	10000	24000	45000	70000
Stock Cash BTST	15000	40000	70000	100000
Cash Positional	20000	27000	40000	70000
Cash Plus	40000	100000	190000	230000
Cash premium	70000	130000	220000	260000
HNI Cash	120000	180000	270000	300000
Intraday Future	15000	30000	55000	85000
Nifty Future	6000	15000	25000	40000
Future Positional	15000	4000	70000	120000
Future Power	35000	95000	185000	225000
Future Plus	45000	105000	195000	235000
HNI Future	125000	185000	275000	305000
HNI Options	20000	45000	80000	120000
Option BTST	15000	40000	70000	100000
Nifty Option	5000	12000	20000	30000
Optional Positional	25000	60000	90000	130000
Option Call & Put	5000	12000	20000	30000
Commodity Agri	10000	27000	50000	90000
Precious Metal	20000	45000	81000	120000
Base Metal + Energy	15000	36000	60000	100000
MCX Premium	49000	99000	150000	224900
HNI MCX	79000	129000	179000	254900
IDR (Instant Data Result) pack	100000	150000	190000	274900
Currency	5000	12000	20000	30000

Combo (Cash + Future)	10000	25000	44000	80000
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f. It's address is 123, Abc Indore MP, Phone no. is 07314001598, and email ID is info@vivanequities.com. The said details matched with details provided by the complainant in his aforesaid email dated July 25, 2016.

g. It has 100 employees offering advisory services to 542 clients.

17. Further, I note that PayU vide email dated February 22, 2023 provided information regarding MID linked to Axis bank account no. 9140100xxxx4334. As per the said email, MID: 5331406 is linked with Axis Bank account no. 9140100xxxx4334 having legal name Mr. Ankush Patidar, website: www.vivanequities.com. Further, the service agreement dated January 15, 2016, executed between Mr. Ankush Patidar and PayU, inter-alia, mentioned: -

- a. Address of Mr. Ankush Patidar, referred as Merchant in the agreement, is 4/12, Nehru Nagar, Indore, Madhya Pradesh – 452001. Email id of the merchant is ansh.patidar@gmail.com;
- b. Agreement is entered for availing PayU services to accept payments of customer charge through the internet and/ or through IVR System from Customers, for products purchased by them on the Merchant Site and receive aggregate final payment of settlement amounts in the Merchant bank account.
- c. Merchant bank account no. is 9140100xxxx4334, Axis Bank in the name of Mr. Ankush Patidar;
- d. Clause 1, sub clause (ee) of the said agreement stated that PayU provided service for purpose stated in Schedule B. Schedule B titled as Business category & purpose mentioned Business sub- category as stock advisory services.

18. From the information provided by ICICI Bank and Axis Bank, I note that Mr. Ankush Patidar held following bank accounts in his name: -

Table: 5

Bank Name	Account Name	Account No.
ICICI Bank	Ankush Patidar	09450xxx8099
Axis Bank	Ankush Patidar	9140100xxxx4334

19. I note that the narration of transactions in the Noticee's Axis Bank no. 9140100xxxx4334 read as 'BIL/000911472339/trading/NSP', 'BIL/000922004171/fee/NSP', 'BIL/001149460762/Advisory/NSP', 'UPI/023813316344/For trading com/vikky0987@okici/I' and 'UPI/024216416562/For share tradi/vikky0987@okici/I'.

20. From the website of the Noticee, I find that that the Noticee held itself to be an investment advisor engaged in the business of providing investment advisory services. From various products/advisory services, tabulated in Table-3 above, I find that the Noticee is engaged in providing advice related to investing in, purchasing, selling or dealing in securities. From schedule of fees being charged by the Noticee for different products/advisory services for varying period, tabulated in Table-4 above, and narration of transactions of the Noticee's ICICI bank account, tabulated in Table – 2 above, I find that the Noticee provided investment advice within the meaning of Regulation 2(1) (l) of the IA Regulations to clients or other persons for consideration. I also find from narration of transaction dated May 30, 2016 in the Noticee's ICICI bank account no. 09450xxx8099 that the Noticee received Rs.5000/- as consideration from the complainant. In view of the above, I find that the Noticee acted as an investment adviser within the meaning of Regulation 2(1)(m) of the IA Regulations.

21. I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, 2013, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct

its activities in accordance with the provisions of the SEBI Act and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

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

22. As per Regulation 3(1) of IA Regulations, 2013, the registration of the investment advisers is mandatory. It provides that, *“On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations”*.

23. 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 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 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.

24. The IA Regulations provides for the minimum professional qualification and prescribes mandatory net-worth requirement. 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.

25. It is noted that the Noticee was not registered with SEBI in the capacity of Investment Adviser. Hence, I find that the activities of the Noticee, as brought out above, were being carried out by the Noticee without holding the certificate of registration as an investment adviser and are in violation of Section 12(1) of the SEBI Act read with Regulation 3(1) of the IA Regulations.

26. I note that the Noticee received total credit of Rs. 89,80,231/- in the said ICICI bank account no. 09450xxx8099 during the period from December 14, 2015 to October 10, 2022. Further, the Noticee received total credit of amount of Rs.39,22,414/- in the said Axis bank account no. 9140100xxxx4334 during the period December 23, 2014 to October 03, 2022. SEBI vide letter dated December 13, 2021, inter-alia, alleged that the Noticee is engaged in carrying unregistered investment advisory activities without obtaining certificate of registration from SEBI and advised the Noticee to provide information such as Client names, amounts collected as fees, details of bank accounts in which amount was collected, etc. However, the Noticee failed to respond to the said letter. Further, the SCN, inter-alia, alleged that the amounts credited in the bank accounts of Noticee was received as fees towards the services rendered as investment advisor. The Noticee was called upon to show cause as to (i) why suitable directions for refund of fees of Rs. 1,29,02,645/-, taken towards investment advisory activity, should not be issued against the Noticee. Again the Noticee failed to respond to the SCN. In view of the above, I find that total credit of Rs. 1,29,02,645/- in the ICICI bank account and Axis bank account of the Noticee was received by the Noticee as fee for investment advisory services provided by the Noticee 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 and without obtaining certificate of registration from SEBI violated Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act.

27. I note that the SCN and SSCN has called upon the Noticee to show cause as to why appropriate penalty be not imposed upon it under Section 15EB and 15HB of SEBI Act for the violations alleged in the SCN and SSCN. Section 15 EB and 15HB of the SEBI Act are extracted 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.”*

28. I note that Section 15EB of the SEBI Act was inserted in the SEBI Act by the Finance Act, 2018 with effect from March 08, 2019. As noted above, the Noticee had continuously been receiving investment advisory fees in its bank accounts from December 23, 2014 to October 10, 2022 i.e. even before March 08, 2019 and also thereafter. In view of the above, I find that the Noticee acted in violation of Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act from December 23, 2014 to October 10, 2022. Thus, I find that the Noticee is liable to be imposed with penalty under both Section 15EB and 15HB of the SEBI Act.

29. 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.”

30. The activities of the Noticee, as brought out above, seen in the backdrop of the aforesaid provisions show that it was acting as an investment adviser without

holding the certificate of registration as investment adviser. I find that the Noticee has violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations.

31. As observed above, I note that the Noticee received total credit of Rs. 89,80,231/- in the ICICI bank account no. 09450xxx8099 during the period from December 14, 2015 to October 10, 2022. Further, the Noticee received total credit of amount of Rs.39,22,414/- in the said Axis bank account no. 9140100xxxx4334 during the period December 23, 2014 to October 03, 2022. The Noticee received total amount of Rs. 1,29,02,645/- (Rupees One Crore Twenty Nine Lakh Two Thousand and Six Hundred Forty Five Only) as advisory fees, being the proceeds of an illegal activity and are liable to be refunded to the respective clients.

DIRECTIONS

32. 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, 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 a sum of Rs. 1,29,02,645/- (Rupees One Crore Twenty Nine Lakh Two Thousand and Six Hundred Forty Five Only) to its clients as detailed hereinafter;
- (b) The Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, about this Order and shall give details of 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 Noticee shall accept refund claims/requests for a period of 3 months from the date of public notice, as directed under para 32 (b) above;
- (d) The Noticee shall within a period of four months from the date of public notice, as directed under para 32(b) above, carry out and complete the refund exercise;
- (e) Upon expiry of four months from the date of public notice, any balance amount which remains with the Noticee, due to its inability to contact the client or otherwise, as directed in para 32 (d) above, shall be deposited in a dedicated escrow account, to be opened and maintained by the Noticee for a period of one year and utilized only for the purpose of refund to clients. Thereafter, the amount lying in the said escrow account shall be transferred to the Investors Protection and Education Fund maintained by SEBI;
- (f) The repayments to the claimants or clients shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- (g) The Noticee is hereby prohibited from selling its assets, properties including mutual funds/shares/securities held by it 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 clients who were availing the investment advisory services from the Noticee;
- (h) 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 32 (g) above shall cease to operate upon filing of such report. In case of disbursal of any amount from the said escrow account, the Noticee shall also file a report of such disbursal with SEBI, within a period of 15 days, after expiry of one year, as directed in para 32 (e) above, duly certified by an independent Chartered Accountant;

- (i) The Noticee is restrained 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 32(h) above, whichever is later;
- (j) The Noticee is also restrained from associating itself as a director or key managerial personnel with any listed public company or any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period of two years from the date of this order;
- (k) The Noticee shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 32(i) 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;
- (l) The Noticee is hereby imposed with penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 15HB of the SEBI Act and Rs.1,00,000/- (Rupees One Lakh Only) under Section 15EB of the SEBI Act;

(m) 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.

33. In case of failure of the Noticee to comply with the aforesaid directions in para 32(a) and 32(m), SEBI, on the expiry of the stipulated time period therein, may recover such amounts, from the Noticee, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws;

34. The direction for refund, as given in Para 32 (a) above, shall 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.

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

36. A copy of this order shall be sent to the Noticee, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds.

Date: July 19, 2023

Place: Mumbai

**K SARAVANAN
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**