

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/59716	Date: December 12, 2023
Circular Ref. No: 258/2023	

To All NSE Members,

Sub: SEBI order in respect of M/s Starburst Research and its proprietors Mustkim and Sarfraj Ali in the matter of unregistered investment advisory activity.

SEBI vide its order no. WTM/AN/WRO/WRO/29863/2023-24 dated December 11,2023, has debarred below mentioned entities 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 2 (two) years from the date of this order or till the expiry of 2 (two) years from the date of completion of refunds to investors as directed in paragraph no. 30.5 of above SEBI order.

Sr. No.	Name of the Entity	PAN
1	Mustkim	AXJPM6692G
2	Sarfraj Ali	AULPA2242F

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 mentioned 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-invs-g-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 respect of M/s Starburst Research and its proprietors Mustkim and Sarfraj Ali in the matter of unregistered investment advisory activity.

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 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 Entity	PAN
1.	Mustkim	AXJPM6692G
2.	Sarfraj Ali	AULPA2242F

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee no. and collectively referred to as "Noticees")

In the matter of unregistered investment advisory activity**A. BACKGROUND:**

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint against M/s. Starburst Research (hereinafter referred to as "**Starburst**"), a proprietorship concern of Mr. Mustkim and Mr. Sarfraj Ali. (Starburst and its proprietors are collectively referred to as the "**Noticees**").
2. SEBI conducted an examination into activities of the Noticees, in order 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 Act, 1992 ("**SEBI Act**") and the Securities and Exchange Board of India (Investment Advisors)

Regulations, 2013 (“**IA Regulations**”) and any other Rules or Regulations made thereunder, by the Noticees.

3. Based on the examination of the aforesaid complaint, the website, bank account and bank account opening forms, it was *prima facie* found that the Noticees were engaged in investment advisory services without obtaining a certificate of registration from SEBI thereby violating Section 12(1) of the SEBI Act read with Regulation 3(1) of the IA Regulations.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated December 20, 2022 (hereinafter referred to as “**SCN**”) was issued to the Noticees calling upon them to show cause as to why suitable directions under Sections 11(4) and 11B (1) read with Section 11(1) of the SEBI Act, 1992 including direction of refund of fees/ monies collected from the investors should not be issued against the Noticees for the alleged violations. The Noticees were also called upon to show cause as to why inquiry should not be held against them in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon the Noticees under Section 11(4A) and 11B (2) read with Section 15EB of the SEBI Act for the alleged violations. The following documents were enclosed as annexures to the said SCN:

Table no. 1

Annexures to the SCN	
Annexure No.	Particulars
A	Copy of the complaint along with screenshots of WhatsApp messages
B	Screenshots of the website www.starburstresearch.co.in
C	Copy of account statement of Axis Bank account number 919XXXXXXXXX032
D	Copy of account statement of ICICI Bank account number 685XXXXXXXX140

Annexures to the SCN	
Annexure No.	Particulars
E	Copy of account statement of Yes Bank account number 083XXXXXXXXXX002
F	Credit entries considered as advisory fee obtained by Starburst
G	Letters dated November 18, 2021 sent to the Noticees
H	Call recording provided by the complainant

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

5.1. SEBI received a complaint on October 21, 2020 against M/s. Starburst Research which *inter alia* alleged that Starburst claimed to provide investment advise (HNI calls), however, after paying the fee, the complainant was asked to pay more. The complainant has provided the details of payment of INR 16,500 along with details of Axis Bank Account of Starburst in which the money was transferred. The complainant also provided screen shots of WhatsApp messages of orders and position details provided by the Noticee and call recordings.

5.2. The website of Starburst Research i.e. www.starburstresearch.co.in is currently not active. However, on the basis of screenshots of the website provided by complainant, it was observed that Starburst had, *inter alia*, disclosed the following on the website:

a) *“Star Burst Research Advisory, A Trusted Name in the Financial Services Arena. Provides you with the entire gamut of financial Advisory Services under one ceiling. It is one of the few organizations providing Research and Information on Indian Capital Markets Mainly based on Technical Analysis and Enjoys a strong Reputation amongst investors, brokers and Researchers. Our team is highly skilled with Experienced Analysis. Our efforts are to provide you more & more profit in every trade. Our research is based around these services: Commodity tips, Equity tips, NCDEX tips, MCX tips...”*

“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.”

- b) Risk profiling: The website also had a page on risk profiling wherein Risk Profile form to be filled by the clients was given. The page had the following details mentioned on it:

“Risk Profile Form

As Per SEBI Norms KYC Is Mandatory. For All Clients. After Subscribing Us. Submit This KYC Form. Without Submitting This Agreement or KYC Form Your Service Will Not Start....”

Declaration by the client, Disclaimer and Terms by Starburst are also mentioned on this website’s page.

- c) Contact details as mentioned on the website are-
Address: 301, 306 Indraprastha Tower M G Road, Indore 452001
Tel: 7300420121
Email: support@starburstresearch.co.in
info@starburstresearch.co.in

5.3. Further, as per screenshot of website of Starburst provided by complainant, Starburst offered various services which are, *inter alia*, mentioned below:

- a. **Low Investment services (upto 1 lakh)**
- b. **Medium Investment services (1 lakh to 3 lakhs)**
- c. **High Investment Services (Above 3 Lakhs)**
- d. **Equity Market**– Intraday Cash, HNI cash, Delivery Pack, Cash Blue Chip, Jobbers Cash Pack.
- e. **Future Markets** – Intraday Future, HNI Future, Future Positional, Nifty Future, MinMax Express, Index Future, Jobbers Future.
- f. **Option Market** – Option Call & Put, Nifty Option, HNI Option, Index Option, Optional Positional.
- g. **Commodity Market** – Commodity MCX Tips, HNI MCX, Base Metal + Energy, Break Out Pack, Agri HNI.

5.4. The details of pricing mentioned on the website are tabulated below:

Table no. 2

Name of Services	Monthly fee	Quarterly fee	Half Yearly fee	Yearly fee
Equity Market				
Intraday Cash	8000	8000	8000	NA
HNI Cash	45000	95000	155000	NA
Delivery Pack	15000	32000	55000	NA
Cash Blue Chip	NA	45000	75000	NA
Jobbers Cash Pack	75000	205000	505000	905000

Name of Services	Monthly fee	Quarterly fee	Half Yearly fee	Yearly fee
Future Market				
Intraday Future	15000	30000	45000	NA
HNI Future	50000	125000	185000	NA
Future Positional	35000	80000	125000	NA
Nifty Future	15000	30000	45000	NA
MinMax Express	35000	85000	155000	NA
Index Future	10000	17000	25000	NA
Jobbers Future	85000	225000	NA	NA
Option Market				
Option Call & Put	12000	23000	35000	NA
Nifty option	12000	23000	35000	NA
HNI Option	45000	95000	155000	NA
Index Option	10000	17000	25000	NA
Optional Positional	30000	65000	95000	NA
Commodity Market				
Commodity MCX Tips	17000	35000	55000	NA
HNI MCX	50000	125000	205000	NA
Base Metal + Energy	12000	23000	35000	NA
Break Out Pack	35000	80000	135000	205000
Agri HNI	35000	80000	135000	205000

"Note – YEARLY PACK /CURRENTLY NOT AVAILABLE"

5.5. The payment tab on the website provides that payment can be made in the accounts maintained with Axis Bank Ltd., ICICI Bank Ltd. and Yes Bank. Further, online payment can also be made through BHIM UPI. The details of the bank accounts mentioned in the website are provided below:

Table no. 3

Sl. No.	Bank	Account Name	Account No.
1.	Axis Bank Ltd.	Starburst Research	919XXXXXXXXXX032
2.	ICICI Bank Ltd.	Starburst Research	685XXXXXXXX140
3.	Yes Bank	Starburst Research	083XXXXXXXXXX002

5.6. The following amounts credited into the accounts of Noticees are alleged to be received as fees towards the services rendered as investment adviser:

Table no. 4

Account No.	Bank Name	Account Name	Name of proprietor	Statement period	Amount considered as Advisory fee
919XXXXXXXXX032	Axis Bank	Starburst Research	Mustkim	14.02.2020 to 25.04.2022	8,14,700/-
685XXXXXXXX140	ICICI Bank		Mustkim	10.09.2020 to 25.04.2022	1,52,212/-
083XXXXXXXXX002	Yes Bank		Sarfraj Ali	17.09.2020 to 30.11.2021	3,59,518/-
Total					13,26,430/-

5.7. The copy of GST certificate used by Yes Bank at the time of account opening shows that Starburst Research is a supplier of the following services:

“Other financial services (except investment banking, insurance services and pension services), deposit services, services, Brokerage and related securities and commodities services including commodity exchange services, Portfolio management services except pension funds”.

5.8. The account opening form of YES Bank Account specifies the nature of business as ‘Services’, nature of industry as ‘Consultancy Firm’ and source of funds as ‘Fees’. Further, the nature of business activity mentioned in the Field & Contact Verification Form of Axis Bank is ‘Trader’.

5.9. The first and last credit transactions considered as advisory fee obtained by Starburst Research is in Axis Bank Account on September 08, 2020 and in YES Bank Account on November 29, 2021, respectively. Accordingly, the period from September 08, 2020 to November 29, 2021 is considered as the period during which Noticee allegedly collected fee for rendering investment advisory services.

5.10. The complainant alleged that Noticees had defrauded the complainant and the complainant had deposited INR 16,500/- in Noticees’ Axis Bank account as advisory fee. From the analysis of Axis Bank account statement, it is observed that the same has been credited in Noticees’ Axis Bank account.

5.11. The call recordings provided by the complainant show the conversation between Starburst Research executives and the complainant. The call recordings show Starburst officials carrying out the Risk Profile of the complainant telephonically by asking him various questions pertaining to his job profile, liabilities, dependent family members, rented or owned accommodation etc. and explaining to him that according to the Risk Profiling score, market entry and exit would be decided, profit ratio and risk capacity would be calculated. The call records also show the officials convincing the complainant to put in additional funds for trading and complainant complaining regarding the loss he has made on the trading calls provided by the Noticees.

5.12. During the course of examination, SEBI vide letters dated November 18, 2021 advised the Noticees to submit information relating to unregistered investment advisory activities. The letters sent by Speed Post with Acknowledgement Due (SPAD) to Starburst and Mustkim were delivered, however, no response was received from the Noticees.

6. Therefore, the SCN alleged that the Noticees were engaged in “investment advisory services” without obtaining a certificate of registration in violation of Section 12(1) of the SEBI Act read with Regulation 3(1) of the IA Regulations.

7. The SCN dated December 20, 2022 was sent to the Noticees by Speed Post with Acknowledgement Due (SPAD). The SCN was delivered to one of the two addresses of Starburst and to Mr. Mustkim on December 26, 2022. The SCN sent to Mr. Sarfraj Ali through SPAD and through Market Infrastructure Institutions (MIIs) returned undelivered. Thereafter, the SCN was served on Mr. Sarfraj Ali by way of public notice dated March 31, 2023 in the Times of India (Jaipur) and Rajasthan Patrika (Jaipur). However, no reply to the SCN was received from either of the two noticees. Thereafter, Noticees nos. 1 & 2 were granted an opportunity of personal hearing on June 19, 2023, which was served by way of SPAD in respect of Noticee no. 1 and by way of public notice dated May 31, 2023 in Times of India (Jaipur) and Rajasthan Patrika (Jaipur) in respect of both the Noticees. However, the Noticees failed to appear before me on the date of the hearing.

8. In the matter of Classic Credit Ltd. V. SEBI [2007] SCL 51 (SAT-MUM.), the Hon'ble Securities Appellate Tribunal (SAT), *inter alia*, held that, "...*The appellants did not file any reply to 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.*". Further, in the case of Dave Harihar Kiritbhai vs. SEBI (Appeal no. 93 of 2014), order dated December 19, 2014, Hon'ble SAT has observed that: "...*and since further it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal....*"
9. I note that the *Noticees* have been given sufficient opportunities and therefore, the principles of natural justice have been duly complied with, and I now proceed to consider the matter on merits on the basis of the material available on record.

C. CONSIDERATION OF ISSUES AND FINDINGS

10. Before dealing with the alleged violation of carrying out unregistered investment advisory by the *Noticees*, it would be appropriate to refer to the provisions of SEBI Act and IA Regulations, which are relevant for determining the said violation. The relevant extracts of these provisions are as under:

SEBI Act

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:

IA Regulations

Definitions

2. (1) *In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly, -*

(g) “consideration” means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;

(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 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;

(m) “investment adviser” means any person who for consideration, is engaged in the business of providing 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.

CHAPTER II REGISTRATION OF INVESTMENT ADVISERS

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”.

11. After considering the SCN, the following issues arise for consideration:

- 11.1. Issue No. 1: Whether the Noticees acted as investment adviser?
- 11.2. Issue No. 2: Whether Noticees have violated regulation 3(1) of the IA Regulations read with section 12(1) of SEBI Act?
- 11.3. Issue No. 3: If the answers to the aforesaid questions are in affirmative, whether this warrants issuance of directions and/ or penalty under sections 11(1), 11(4), 11(4A), 11A, 11B (1) and 11B (2) of the SEBI Act?

Issue No. 1: Whether the Noticees acted as investment adviser?

12. 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 the 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.

13. From the above, I note that a person may be regarded as an Investment Adviser, if:

13.1. He provides investment advice for consideration; or,

13.2. He holds himself out as an investment adviser.

14. I note that the examination in the matter was initiated by SEBI based on a complaint. The complainant had alleged that Starburst had taken INR 16,000 as fee from him for providing investment advice and that he lost his money on acting upon the recommendations given by the Noticees. The complainant also provided screenshots of the website of Starburst, WhatsApp messages of order and position details and call recordings with Starburst employees.

15. I note that the website www.starburstresearch.co.in is currently inactive and the archive copy of the said website is also not available. From the screenshots provided by the complainant, the relevant extracts of which are provided at paragraph nos. 5.2, 5.3 and 5.4, I note the following:

15.1. Starburst claims to provide financial advisory services on Indian capital markets based on Technical Analysis.

15.2. Starburst claims to have a highly skilled and experienced team.

15.3. Starburst claims to provide advisory services in various segments like commodity, Equity, Futures, Options etc. The pricing details for availing these services were provided and these ranged from INR 8,000/- to INR 2,05,000/-.

15.4. The website contains a separate page on risk profiling which also refers to SEBI norms on KYC.

16. From the contents of the website referred above, it is abundantly clear that investment advisory services were being offered by Starburst. Futures, Options, Commodity and Shares are securities as per the definition provided in Section 2(h) of the Securities Contract Regulation Act, 1956. Thus, I find that the Noticees were engaged in providing advice related to investing in, purchasing, selling or dealing in securities. The website further provided details for payment in the bank account

no. 919XXXXXXXXX032 held with Axis Bank, account no. 685XXXXXX140 with ICICI Bank and account no. 083XXXXXXXXX002 with Yes Bank. The account opening forms for the aforesaid three bank accounts were sought from the respective Banks.

17. I note that the bank account opening forms of “Starburst” for accounts with Axis Bank and ICICI Bank record that Mr. Mustkim is the proprietor of “Starburst”. The Yes Bank account opening form of “Starburst” records that Mr. Sarfraj Ali is the proprietor of “Starburst”. Proprietorship firm, by concept, is an entity held solely by one person. In the instant case, curiously, both the Noticees have a proprietorship firm registered in the same name of “Starburst” as per the GST registration certificates enclosed with the bank account opening forms.

18. I note that the complainant has mentioned that he had transferred INR 16,500 to the Axis Bank account of the Noticees in return for investment advisory services. The same has been identified in the bank statement pertaining to Axis Bank account number 685XXXXXX140 maintained by Starburst. The details of the same are given below:

Table no. 5

TRAN_DATE	PARTICULARS	Credit amount (INR)
22/09/2020	NEFT/FDRLM0266534215////Info1	1500
24/09/2020	NEFT/FDRLM0268637633////Info1	4000
29/09/2020	NEFT/FDRLM0273935712////Info1	7000
29/09/2020	NEFT/FDRLM0273952651////Info1	4000

19. From the bank accounts statements of the Noticees, I note that apart from credit transactions with narration containing terms related to investment advice viz., “Advisory” and “Advisory Registration”, there are many transactions which are exactly the same or similar to the packages offered by Starburst indicating that the Noticees collected fees from investors for investment advisory services. Further, considering that the Bank accounts of Starburst with Axis Bank, ICICI Bank and

YES Bank were publicized on its website, the credit entries in these three accounts after deducting entries like SELF, interbank account credits, interest received, account opening credits and penny credits, are positively attributable to fees collected towards unregistered investment advisory services. The total of such credits received in the aforesaid three bank accounts, as detailed in table no. 4, is INR 13,26,430.

20. As per the screenshots of the webpages of the website of Starburst, various packages were offered for investment advisory by holding itself out as an Investment Advisor. Further, as noted above, the aforementioned three bank accounts of Starburst were used to collect fees as consideration for the investment advisory activities. Thus, the action of Starburst and its proprietors satisfy the criteria necessary to be classified as an Investment Advisor, as mentioned at paragraph no. 13.

21. I also note that the Noticees were advised to provide the details of their unregistered investment advisory by SEBI vide letters dated November 18, 2021, however, the Noticees failed to respond to the queries of SEBI.

22. In view of the aforesaid discussions, I am of the view that the activities of the Noticees and their action of holding themselves out to be an 'Investment Adviser' by offering to provide 'Investment Advice' related to investing in, purchasing and selling of securities in return for consideration received from investors / clients lead to the conclusion that the Noticees were acting as investment advisers as defined in regulation 2(m) of IA Regulations.

Issue No. 2: Whether Noticees have violated regulation 3(1) of the IA Regulations read with section 12(1) of SEBI Act?

23. It has already been established that the Noticees through their firm Starburst were carrying out investment advisory activities. I note that from the available records that Starburst was at no time registered as an investment adviser with SEBI.

24. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations have been framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under Regulation 3(1) of the IA Regulations, which, *inter alia*, provides that, 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 SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations. Further safeguards provided under IA Regulations include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

25. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that Noticees were holding themselves out and were acting as an Investment Adviser, although they were not registered with SEBI in the capacity of an Investment Adviser. Hence, I find that these activities/ representations made by the Noticees without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations.

Issue No. 3: If the answers to the aforesaid questions are in affirmative, whether this warrants issuance of directions and/ or penalty under sections 11(1), 11(4), 11(4A), 11A, 11B (1) and 11B (2) of the SEBI Act?

26. I note that the SCN had *inter alia* called upon the Noticees to show cause as to why appropriate penalty should not be imposed upon it under Section 15EB of SEBI Act for the violation of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations but no reply was received. Section 15EB of the SEBI Act reads as follows: -

“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.”

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 brought out above, the Noticees were acting as investment adviser, without holding the certificate of registration as investment adviser in violation of Section

12(1) of the SEBI Act read with Regulation 3(1) of the IA Regulations. In view of the same, I am of the considered view that the conduct of the Noticees warrants imposition of monetary penalty under section 15EB of the SEBI Act.

29. In the instant proceedings, the amount of fees / consideration collected by the Noticees as a result of providing unregistered 'Investment Advice' to clients / investors, amounted to INR 13,26,430. In light of the findings in the preceding paragraphs, I am of the considered view that the Noticees are liable to refund the aforementioned amount collected as fees in lieu of unregistered 'Investment Advice' offered to the clients / investors, and accordingly, a direction to Noticee to refund such amount will be in the interest of investors in the securities market.

D. ORDER:

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

30.1. The Noticees shall, within a period of three months from the date of this Order, jointly and severally, refund the monies (recorded in Table no. 4) received from any client / investor, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities, along with interest at the rate of 12% per annum from the date of receipt of money till its refund;

30.2. The Noticees 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(s) such as names, addresses and contact details, within 15 days of this Order;

30.3. The repayments to the clients / investors shall be effected only through banking channels (i.e., no cash transfers), which ensures audit trail to identify the beneficiaries of repayments;

- 30.4. The Noticees 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 shall allow debit only for the purpose of making refund to the clients / investors who were availing investment advisory services from the Noticees, as directed in this Order, from the bank accounts of the Noticees;
- 30.5. After completing the refund as directed in paragraph no. 30.1 above, within a period of 15 days, the Noticees shall file a report of such completion with SEBI addressed to “Deputy General Manager, SEBI - Indore Local Office, 104-105, Satguru Parinay, Opposite C-21 Mall, A.B. Road, Indore – 452010”. The report should be duly certified by an independent Chartered Accountant that all repayments have been made to the investors / clients of the Noticees by taking into account directions given at paragraph no. 30.3 and indicate the amount, mode of payment, names of the investors/ clients refunded, their communication address, mobile numbers etc. The direction at paragraph no. 30.4 above shall cease to operate on completion of refunds to investors/ clients and the aforesaid report is filed, to the satisfaction of SEBI;
- 30.6. The remaining balance amount that could not be refunded shall be deposited with SEBI which will be kept in an escrow account for a period of one year for the sole purpose of distribution to clients/ investors who were availing investment advisory services from the Noticees. Thereafter, the remaining amount, if any, shall be deposited in the Investor Protection and Education Fund, maintained by SEBI;
- 30.7. The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two years from the date of completion of refunds to investors/ clients as directed in paragraph no. 30.5 above;

30.8. The Noticees shall, with immediate effect, be restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in any capacity, till the conclusion of two years from the date of completion of refunds to clients / investors as directed in paragraph no. 30.5 above read with paragraph no. 30.6 above.

31. Further, in exercise of the powers conferred upon me in terms of sections 11(4A) and 11B (2) read with section 15EB of the SEBI Act, I hereby impose a penalty of INR 5,00,000 (Rupees Five lakh only) on the Noticees to be paid jointly and severally, within a period of 45 (forty-five) days from the date of receipt of this order.

32. The Noticees shall remit/ pay the said amount of penalty through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The details/ confirmation of e-payment should be sent to “Deputy General Manager, SEBI - Indore Local Office, 104-105, Satguru Parinay, Opposite C-21 Mall, A.B. Road, Indore – 452010” 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: (penalties/ disgorgement, along with order details)	

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

34.A copy of this order shall be served upon the *Noticees*, recognized Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Sd/-

ANANTH NARAYAN G.

DATE: DECEMBER 11, 2023

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA