

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4)(b) and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of VPS Advisory Services and its proprietor viz., Shri Varun Pratap Singh (PAN- BGEPS3887G)

Background

1. Securities and Exchange Board of India ("SEBI") came across an article dated June 25, 2013, published in "Moneylife" regarding the activities of M/s VPS Advisory Services (hereinafter referred to as "VPS") wherein it was alleged that VPS had promised 20 per cent returns on the investments. It was observed from its website viz., www.vpsadvisory.com that VPS offers various investment advisory services to the investors.
2. Pursuant to the same, SEBI conducted a preliminary examination of the activities of VPS, with a view to ascertain possible violations of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act, 1992**") and the Securities and Exchange Board of India (Portfolio Manager) Regulations, 1993 ("**PMS Regulations**").
3. *Prima facie findings/allegations in brief:* Pursuant to the examination, SEBI passed an interim order dated June 17, 2015, against VPS and its proprietor Shri Varun Pratap Singh (hereinafter referred to as Noticees), wherein the following prima facie findings/allegations were recorded:
 - a. VPS is a proprietorship firm, established on December 06, 2013 by Shri Varun Pratap Singh as the proprietor and having its office at A-65, Govindpuri, Gwalior, Madhya

- Pradesh. However, VPS was running its business from Bangalore from A1, Ist Floor, Savithri Residency, No. 51 & 52, Yellapa Garden, Bangalore - 560085. Shri Varun Pratap Singh was a registered sub-broker of Sharekhan in the trade name Bangalore Consultancy Services till November 2013. Through its website viz., www.vpsadvisory.com VPS offers various investment advisory services to the investors.
- b. VPS and its proprietor Shri Varun Pratap Singh were not registered as a portfolio manager with SEBI as per regulation 3 of the PMS Regulations.
 - c. VPS was collecting funds from investors and manages their funds by investing in derivatives segment. VPS was providing advisory services in cash, derivative segments and also in commodity markets. Fees structure for availing advisory services was stated as `10,000/- per month for cash and derivative segment and `5,000/- per month for commodities. Guaranteed returns were offered to its clients.
 - d. Portfolio Management services were offered by VPS since March 2012 and most of the clients were individuals. On the basis of the information furnished by VPS, it is apparent that Portfolio Management services were offered to at least 9 clients. From the analysis of Bank statements provided by various banks, it is observed that there are several deposits into the bank accounts from many clients which are equivalent to the fees charged by VPS for various advisory services offered by VPS.
 - e. Due to the above activities, the Noticees have violated section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PMS Regulations.
4. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 17, 2015 with immediate effect:

- i. “to cease and desist from acting as portfolio manager and not to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any manner whatsoever;
 - ii. Immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, website etc. in relation to their portfolio management activities in the securities market
 - iii. Not to raise any funds from investors and not to divert any funds already raised from investors.”
5. In the interim order it was stated that Shri Varun Pratap Singh, proprietor of VPS, would be afforded 21 days, from the date of receipt of the interim order, to file his replies, if any and to seek an opportunity of personal hearing, if they so desired.
6. *Service of interim order and hearing notice:* The interim order dated June 17, 2015 was sought to be served on Shri Varun Pratap Singh, vide letter dated June 18, 2015. Shri Varun Pratap Singh, vide letter dated July 29, 2015 has submitted his replies to the said interim order. Subsequently, vide notifications dated June 10, 2017, published in the newspapers *The Times of India* and *Dainik Bhaskar*, the said Noticees were granted an opportunity of personal hearing by SEBI on July 4, 2017 at the time and venue mentioned therein.
7. *Hearing and submissions:* Shri Varun Pratap Singh has filed his reply dated July 29, 2015 in the matter, pursuant to the interim order. However, the entity did not avail of the opportunity of personal hearing granted on July 4, 2017.
8. Vide his reply he has made the following submissions:

- a. VPS was not providing any Portfolio Management service since November, 2013, as it was directed by SEBI to stop unauthorized Portfolio Management services. He has submitted copies of emails dated June 18, 2014, wherein he has refused to provide services of Demat account handling to a client.
- b. He was a sub-broker of Sharekhan Limited till November 2013 and he had intended to simply earn profits by trading in the demat accounts of the clients, through his relationship as a sub-broker with Sharekhan Limited. He was not aware that the services he was providing was required to be provided only after registration with SEBI and that it was a technical error.
- c. He was doing his business from Bangalore and had shifted to Gwalior in order to avoid being harassed by his creditors. He had no knowledge that Sharekhan Limited had terminated his registration as a sub-broker till the present proceedings were initiated. Sharekhan Limited had not intimated him of the termination. Till November 20, 2013, he was still receiving communications from Sharekhan Limited. He had re-applied for registration with Sharekhan Limited in January, 2014 which he failed to obtain.
- d. He agrees that VPS handled certain account which was not under his sub-brokership and traded on those accounts, without intending to breach the law intentionally. He submits that the violation was on account of the fact that he had no knowledge that his registration with Sharekhan Limited had been terminated, and he had continued to provide Portfolio Management services till November 2013.
- e. The social media website post which has been relied upon in the interim order dated June 17, 2015 to show that VPS is advertising its Portfolio Management services is dated November 5, 2012. The said pages have been removed from the social media website and the account has been closed.

- f. He admits that all the transaction details were correct. He submits that VPS had one current account in South Indian Bank (051707300000122) and one savings bank account in South Indian Bank (0517053000003216). On account of the demand of the clients, fees were collected in other bank accounts.
 - g. Fees collected from many clients which were equal to or more than the amount of fees collected by VPS for its advisory services were on account of other advisory services and not for Portfolio Management services.
9. I have considered the allegations. I have perused the information received by SEBI, correspondence exchanged between SEBI and VPS and its proprietor Shri Varun Pratap Singh, along with the documents contained therein and other information/materials available from the website and those on record. On perusal of the materials on record, the following issues arise for consideration. Each question is dealt with separately under different headings:
- i. Whether Shri Varun Pratap Singh and his proprietorship firm VPS, was providing unregistered Portfolio Management services.
 - ii. If so, whether Shri Varun Pratap Singh and his proprietorship firm VPS, have violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations.
 - iii. If the findings on Issue No. 2 are found in the affirmative, who are liable for the violation committed?
10. *Whether Shri Varun Pratap Singh and his proprietorship firm VPS, was providing unregistered Portfolio Management services:* I have perused the interim order dated June 17, 2015 for the allegation of unregistered Portfolio Management services.
11. I note that VPS, vide email dated June 11, 2014, has submitted that Portfolio Management services were started on the request of the clients from March, 2012 and were stopped in December, 2013. However, vide letter dated July 29, 2015, Shri Varun Pratap Singh has

submitted that VPS was not providing any Portfolio Management service since November, 2013.

12. I have perused some of the contents of the website and find that VPS was offering Portfolio Management services, as is clear from the following:

- i. *“...we will give you monthly 15-20% return...”*
- ii. *“Give us your D-Mat account user name and password.*
- iii. *We will trade in your account in only STOCK FUTURE which is our news based calls and most successive product.”*
- iv. *“20% return scheme per month is profit earning technique where client can have any D-Mat account with minimum 50,000/- in it. This D-Mat account client has to give us for trading ...”*

13. As per the social media website, the fee structure for Portfolio Management services is `10,000/- per month, `20,000/- per quarter and `80,000/- per year. I find from the materials available on record, the orders were placed through Sharekhan Limited, ICICI Direct, Zerodha, etc.

14. VPS submitted the names and/or telephone numbers of the clients for its Portfolio Management Service. VPS also furnished partial details of the clients availing its Portfolio Management services viz., S.G.Naik, Ahmed, Abhishek Jain, Ashish Shukla, Lalitha K.M., Chengannur-NRI, Addul Rafeeqe K, S.A.Srikanth and Jayamani. I note that Shri Varun Pratap Singh, vide his reply dated July 29, 2015, has admitted to providing Portfolio Management services till November 2013.

15. Vide email dated July 09, 2014, VPS has submitted the following payment details received from its clients who were availing Portfolio Management services:

Client	Payment Amount (in Rs.)	Date and Bank
S.G. Naik	9000/-	South Indian Bank dated March 12, 2012
Ahmed	9995/-	South Indian Bank dated July 01, 2013
Abhishek Jain	10,000/-	South Indian Bank dated April 03, 2012
Ashish Shukla	10,000/-	South Indian Bank dated March 31, 2012
Lalitha K.M.	10,000/-	South Indian Bank dated August 13, 2012
Chengannur-NRI	10,000/-	South Indian Bank dated September 25, 2012
Abdul Rafeeqe	10,000/-	South Indian Bank dated March 19, 2013
S.A. Srikanth	10,000/-	South Indian Bank dated November 27, 2013
Jayamani	6000/-	South Indian Bank dated December 03 , 2013
Total	84995/-	

16. Vide the said email dated July 9, 2014, VPS has also submitted the details of Assets managed during the period of March 2012- December 2013.

Assets managed during the period of March 2012- December 2013:

Client Name	Total Asset Managed (In Rs.)
S.G.Naik	100,000/-
Ahmed	100,000/-
Abhishek Jain	50,000/-
Ashish Shukla	50,000/-
Lalitha K.M.	50,000/-
Chengannur-NRI	50,000/-
Addul Rafeeqe	50,000/-
S.A.Srikanth	50,000/-
Jayamani	50,000/-
Total	550,000/-

Break-up of AUM:

Client Name	Asset Managed as per asset class
S.G.Naik	100,000/- Derivatives
Ahmed	100,000/- Derivatives
Abhishek Jain	50,000/- Derivatives
Ashish Shukla	50,000/- Derivatives

Lalitha K.M	50,000/-	Derivatives
Chengannur-NRI	50,000/-	Derivatives
Addul Rafeeqe	50,000/-	Derivatives
S.A.Srikanth	50,000/-	Derivatives
Jayamani	50,000/-	Derivatives

17. From the records, I find that Portfolio Management services were offered by VPS since March, 2012 and most of the clients were individuals. Trading was done through the trading accounts of the clients availing such Portfolio Management services. VPS has also claimed that it has received fees from the entities amounting to `84,995/-. On the basis of the information furnished by VPS, it is apparent that Portfolio Management services were offered to at least 9 clients.

18. On perusal of the material relating to the Website of VPS, I note that the following bank accounts were mentioned therein.

Sl. no.	Name	Bank	Branch	Account No.	Type of Account	Statement Received	From	To
1	Perna Sharma	SBI	Gurgaon	32701757310	-	Y	01-01-12	31-05-14
2	Perna Sharma	ICICI	Alwar, Rajasthan	100901507300		Y	30-05-12	22-06-14
3	Perna Sharma	Citi	Bangalore	5677159806	Savings	Y	01-01-12	02-06-14
4	Perna Sharma	Citi	Bangalore	5677159806	No Transactions			
5	Perna Sharma	Axis	Bangalore	009010100804851	Salary	Y	01-01-14	28-05-14
6	Geeta Devi Chou	SBI	Alapur, Gwalior	53006104433	-	Y	15-04-05	31-05-14

	han							
7	VPS	South Indian Bank	Bangalore	0517073000000122	Current	Y	01-04-11	31-03-14
8	Varun Pratap Singh	South Indian Bank	Bangalore	517053000003216	Savings	Y	10-02-11	31-03-14
9	VPS	Corporation Bank	Gwalior	CBCA/01/000140	-	Y	10-01-14	11-03-14
10	VPS	Corporation Bank	-	69201601000140	Current	N		

VPS vide email dated July 09, 2014, has stated that Ms. Geeta Devi Chauhan is Shri Varun Pratap Singh's mother and Ms. Prerna Sharma was an employee of VPS till December 2013. Vide his reply dated July 29, 2015, Shri Varun Pratap Singh has admitted that even though VPS had one current bank account (account no. 0517073000000122) and one savings bank account (account no. 05170530000003216) in the South Indian Bank, VPS had collected fees in other bank accounts. It is observed from the bank statements of VPS and other related entities that there are various transactions in their bank accounts which are either equal to or more than `10,000/- per month.

19. From the bank account statement of VPS from April 01, 2011 to March 26, 2014 for the account number 0517073000000122, the following is observed:

Sl. No.	Date	Amount (in Rs.)	Type of transaction	Name of entity
1	03-04-12	10,000	NEFT	Abhishek Kumar Jain
2	13-08-12	10,000	NEFT	Lalitha K M
3	19-03-13	10,000	NEFT	Abdul Rafeeqe
4	27-11-13	10,000	NEFT	E S A Srikanth
5	31-03-12	10,000	NEFT	Ashish Shukla

20. From the bank account statement of VPS after December, 2013 for the account number 0517053000003216, the following is observed:

Sl. No.	Date	Amount (in Rs.)	Type of transaction	Name of entity
1	08-01-14	16,600	NEFT	M Jayamani
2	24-01-14	7,500	NEFT	M Jayamani
3	07-02-14	2,000	NEFT	M Jayamani

21. From the bank account statement of Perna Sharma for her account in Axis Bank, the following is observed:

Sl. No.	Date	Transferred from	Amount (in Rs.)
1	29-04-14	S Prashanth	49000
2	22-05-14	S Prashanth	15000

22. From the bank account statement of Perna Sharma for her account in ICICI Bank, the following is observed:

Sl. No.	Date	Transferred from	Amount (in Rs.)
1	01-01-14	NEFT	30,000
2	06-02-14	Maria M Faroz	25,000
3	07-03-14	474029002 308981	2,00,000
4	24-03-14	529609	45,000

23. From the bank account statement of VPS, for its account in the South Indian Bank, the following is observed:

Sl. No.	Date	Transferred from	Amount (in Rs.)
1	01-10-12	Rajendra Dutta	50,000

24. I find that vide reply dated July 29, 2015, Shri Varun Pratap Singh has submitted that the Bank transactions, provided in the interim order and listed above at paragraphs 19 to 23, except for the 9 clients who were admittedly availing Portfolio Management services, pertained to fees received for other services and not for Portfolio Management services. I have perused the definition of Portfolio Manager as given in regulation 2(cb) of the PMS Regulations, which states that Portfolio Manager means “any person who pursuant to a

contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the clients, as the case may be.” It is noted that the definition of portfolio manager includes advising the management of the portfolio of securities. Therefore, I find that while the Noticees have submitted that they received fees for *other services*, the service of advising on the management of the portfolio of securities would also qualify as Portfolio Management services. Vide the same reply, Shri Varun Pratap Singh has submitted a copy of an email correspondence dated June 18, 2014, between VPS and one Mr. Gowtham J, wherein VPS has refused to provide Portfolio Management services. However, the same cannot conclusively prove that the amounts of money received after December 2013 till as late as May, 2014 were not pertaining to Portfolio Management services as advising the management or administration of a portfolio of securities is also defined as portfolio management services.

25. I note from the interim order that VPS had applied for registration as an investment adviser with SEBI which was rejected. I note that in the hearing granted by SEBI regarding rejection of VPS's application for registration as investment adviser, on May 30, 2014, Shri Varun Pratap Singh, admitted once again that VPS was providing Portfolio Management services to its clients.
26. I further note from the email dated January 8, 2014 from Sharekhan Limited that Shri Varun Pratap Singh was a sub-broker for Sharekhan Limited under the trade name of Bangalore Consultancy Services, and his registration has been terminated in November 2013.
27. As per the admissions of VPS and Shri Varun Pratap Singh, the entity used to provide Portfolio Management services to at least 9 clients, and that it has stated that if found liable for violation of laws with respect to its Portfolio Management services, the entity is ready to refund the fees collected from the said clients. However, I find that the entity had promised certain returns to its clients. Therefore, I find that the entity is liable to refund all the money collected from the clients and promised returns thereon. In view of the above, I find that there

is material available on record to conclude that VPS has provided Portfolio Management services from March, 2012 and has collected fees with respect to its Portfolio Management services till as late as May 2014.

28. *If so, whether Shri Varun Pratap Singh and his proprietorship firm VPS, have violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations:* I note that as a measure of investor protection, it is imperative on any person providing Portfolio Management services, to obtain registration and conduct its activities in accordance with the provisions of the SEBI Act and the PMS Regulations. I have perused of Section 12(1) of the SEBI Act which states that

*“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.”*

Further, I note that as per regulation 3 of the PMS Regulations, *“No person shall act as a portfolio manager unless he holds a certificate granted by the Board under these regulations.”*

29. The Noticees admittedly do not have the registration as a portfolio manager with SEBI. The proviso to regulation 3 of the PMS Regulations states that *“a merchant banker acting as a portfolio manager immediately before commencement of the Securities and Exchange Board of India (Portfolio Managers) (Second Amendment) Regulations, 2006 may continue to do so for a period of six months from such commencement or, if he has made an application for registration under these regulations within the said period of six months, till the disposal of*

such application.” There is nothing on record to show that Noticees were merchant bankers. Therefore, I find that VPS does not fall in the scenario envisaged in the proviso to regulation 3 of the PMS Regulations. Therefore, VPS ought to have provided Portfolio Management services only after obtaining the certificate of registration from SEBI.

30. Shri Varun Pratap Singh has submitted that it was providing Portfolio Management services under the assumption that it was still registered as a sub-broker with Sharekhan Limited, and that Sharekhan Limited had failed to inform him that he was no longer a sub-broker with them. He has also submitted email correspondence dated November 20, 2013 from Sharekhan Limited, to substantiate his claim that he had a bona fide belief that he was registered with Sharekhan Limited as a sub-broker. Shri Varun Pratap Singh has submitted that it is only vide his email dated March 18, 2014, after SEBI initiated the present proceedings, upon enquiry made by him, Sharekhan Limited informed him that his sub-broker ID 1136 was terminated and acknowledged by NSE on November 29, 2013 and by BSE on November 27, 2013. I find that the material available does not conclusively prove that Sharekhan Limited failed to intimate the Noticees. However, the same is not material in determining the present issue. The status of being a sub broker is not a defense for acting as unregistered portfolio manager. I find that Shri Varun Pratap Singh and his proprietorship firm, VPS ought to have obtained a certificate of registration as a Portfolio Manager before offering Portfolio Management services, as the PMS Regulations does not provide sub-brokers with any exemption from the requirement of registration.
31. Shri Varun Pratap Singh has further submitted that social media website posts referred to in the interim order are very old and that the same have been removed and the account has been closed. He has also submitted copies of the same indicating that the date of post was November, 2012. However, the same is not an adequate ground to controvert the allegation that Shri Varun Pratap Singh was providing unregistered Portfolio Management services, as the Noticees were required to obtain the relevant certificate of registration from the date of the commencement of their activities under the PMS Regulations. Further, I have perused the

material available on record obtained from the website dated August 24 and August 2, 2013, which was available online till March 10, 2014. It appears that VPS has now closed down its social media website. However, I find that VPS was offering Portfolio Management services through its posts, till March 10, 2014.

32. In view of the above, I find that Shri Varun Pratap Singh and his proprietorship firm, VPS have violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations.
33. *If the findings on question No.2 are found in the affirmative, who are liable for the violation committed?* : In view of the foregoing, VPS and Shri Varun Pratap Singh are liable for the aforesaid violations of section 12(1) of the SEBI Act along with regulation 3 of the PMS Regulations. In order to safeguard the interest of the investors and their investments, and to further ensure orderly development of securities market it becomes necessary for SEBI to issue appropriate directions against VPS and Shri Varun Pratap Singh.
34. Since Shri Varun Pratap Singh has admittedly collected funds from at least 9 clients for acting as unregistered Portfolio Manager, it would be reasonable that such funds collected in any name are liable to be returned to the clients along with the promised returns.
35. In view of the discussion above, appropriate action in accordance with law needs to be initiated against VPS and Shri Varun Pratap Singh. The interim order has contemplated issuance of directions against the Noticees, including prohibiting them from buying, selling or otherwise dealing in securities market, and directing them to refund any money collected along with the promised returns, to the concerned clients.
36. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus,

power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude.

37. Section 11B and Section 11(4) of SEBI Act are functional tools in the hands of the Board. In effect, Section 11B and Section 11(4) SEBI Act are some of the executive measures available to SEBI to enforce its prime duty of investor protection. SEBI is empowered to issue directions in the interests of investors of any person or class of persons referred to in Section 12 of the SEBI Act or associated with the securities market.

38. Therefore, I, in exercise of the powers conferred under section 19 of the SEBI Act read with sections 11(1), 11(4), and 11B of the SEBI Act, hereby issue the following directions:

a. Shri Varun Pratap Singh and the proprietorship firm, VPS shall forthwith refund the money received from the clients in respect of the unregistered Portfolio Management activities, along with the promised returns and submit a certificate from a peer reviewed Chartered Accountant who is in the panel of any public authority or public institution, within a period of 3 months. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").

b. Shri Varun Pratap Singh and the proprietorship firm, VPS are directed not to, directly or indirectly, access the securities market, and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, till the expiry of 4 years from the date of refund of the money as directed in paragraph 38(a) above. Shri Varun Pratap Singh is also restrained from associating with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI till the expiry of 4 years from the date of refund of the money as directed in paragraph 38(a) above.

c. Shri Varun Pratap Singh and the proprietorship VPS, shall not undertake, either directly or indirectly, portfolio management services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws after the expiry of period of debarment as mentioned in paragraph 38(b).

d. The repayments to the clients shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.

e. The above directions shall come into force with immediate effect.

39. This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by Shri Varun Pratap Singh and the proprietorship VPS.

40. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

DATE: August 22, 2017

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**