

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, read with Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, in the matter of

Sr. no.	Name	PAN	SEBI Registration No.
1	Shri Amit Baburao Ahire, Proprietor- OSAR Capital	AOFPA9923H	INA000002660

Background

1. Securities and Exchange Board of India ("SEBI") vide an interim order dated June 15, 2015, against M/s HBJ Capital Services Private Limited and its Directors and M/s HBJ Capital Venture LLP and its partners, passed directions, *inter alia*, to cease and desist from acting as an Investment Adviser and Alternative Investment Fund and to cease to solicit or undertake such activities or any other unregistered activities in the securities market.
2. Subsequently, SEBI received a complaint from a former customer of M/s. HBJ Capital Services Private Limited ("HBJ Capital") on October 6, 2015, alleging, *inter alia*, that he was receiving investor advisory promotions from Osar Capital and that HBJ Capital recruited an independent financial advisor, viz. Mr. Amit Baburao Ahire and was using his SEBI Registration number at OSAR Capital.

3. Pursuant to the same, SEBI conducted a preliminary examination of the activities of Shri Amit Baburao Ahire (hereinafter referred to as “Noticee”), 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 (Investment Advisers) Regulations, 2013 (“**IA Regulations**”).
4. On examination of the website of OSAR Capital, www.osarcapital.com, it was observed that OSAR Capital is offering “investment advisory services” to its clients. It was also observed that the registration number of the Noticee (SEBI Registration No. INA000002660) was mentioned on the website of OSAR Capital.
5. On enquiry, the Noticee, vide email dated October 13, 2015 submitted, *inter alia*, that OSAR Capital is the Noticee’s sole proprietary concern which is operating from Mumbai with a branch in Bangalore. It was also stated that investment advice for all its clients is provided by the Noticee directly with the help of two research analysts. A list of employees and a list of clients were submitted by the Noticee.
6. On further enquiry as to the Noticee’s failure to submit the information of his sole proprietorship to SEBI, the Noticee replied vide email dated October 15, 2015, *inter alia*, submitting that the failure was not intentional but was on account of his being busy with setting up of his business and since there was no strict timeline for such information, he intended on notifying in a couple of months. Subsequently, further details of the employees of OSAR Capital were also furnished.
7. However, on October 27, 2015, SEBI received an email from the Noticee wherein he revealed that he has been employed by HBJ Capital as a compliance officer for a salary of Rs. 50,000/- per month and HBJ is still involved in providing the investment advisory services in the name of OSAR Capital. Further, he submitted that all the activities of OSAR Capital including marketing, sales, research, and client advisory services are being provided by HBJ Capital and he is not involved in the entire process. The Noticee also submitted certain supporting documents to establish the connection between HBJ Capital and OSAR Capital.

8. Pursuant to the above, SEBI conducted an inspection of books of account, records and documents of HBJ Capital at its office situated at No. 578, 1st and 2nd Floor, 2nd Phase, 6th Block, BSK 3rd Stage, Bangalore-560 085, on November 06, 2015 to verify whether, HBJ capital has violated the directions issued by SEBI vide its Interim Order dated June 15, 2015 by rendering investment advisory services in the name of OSAR Capital, and also to determine whether Shri Amit Baburao Ahire –proprietor of OSAR Capital has violated the relevant provisions of the IA Regulations.
9. *Prima facie findings/allegations in brief:* Pursuant to the examination and inspection, SEBI passed an interim order dated March 17, 2016, against the Noticee, wherein, *inter alia*, the following *prima facie* findings/allegations were recorded:
- a. Amit Baburao Ahire (PAN: AOFPA9923H) is a SEBI registered investment adviser, with SEBI registration number INA000002660). He obtained the SEBI registration on February 16, 2015. The office address of Amit Ahire as per SEBI records is at 637-1/4, Dr. Babasaheb Ambedkar Co-op Housing Society, Park site, Vikhroli (West), Mumbai-400079.
 - b. The nature of the business is mentioned as “investment advisory services’ in the Registration Certificate of OSAR Capital.
 - c. The website of OSAR Capital states the following declaration:

“Our Vision: To be the most trusted and well-respected investment advisory firm in India.
Company Overview: We are a full-service wealth advisory firm committed to helping investors/traders plan a successful financial future....
Our Mission:With creativity and passion, we deliver innovative and customized investment solutions.
Our Team: Amit Baburao Ahire- Investment Adviser and Compliance Officer

SEBI Registration No. INA000002660

Valued Clients: 425”

- d. The website also contains the bank account details of OSAR Capital (maintained with Axis Bank, Srinivas Nagar Branch, Bangalore), for making online payment towards the fees.
 - e. The aforesaid details clearly indicate that OSAR Capital is engaged in providing investment advisory services to investors on payment of fees by using the SEBI registration number of the the Noticee. It was only when SEBI made enquiries with the Noticee about the activities of OSAR Capital, that SEBI was informed that he was carrying out the investment advisory services through his Proprietary concern, OSAR Capital.
10. On perusal of the various e-mails exchanged between the Noticee and Kumar Harendra, Director of HBJ Capital, and also from the written statements dated October 26, 2015 and October 27, 2015 given by the Noticee, it is *prima facie* observed that:
- a. OSAR Capital, has been formed by using the documents of the Noticee, who holds a SEBI registered Investment Adviser Certificate. An amount of Rs. 1,20,000/- was paid as compensation by HBJ Capital to the Noticee, during the month of August and September, 2015. The Noticee has also been appointed as one of the directors of a company formed by Kumar Harendra viz. OSAR Capital Services Pvt. Ltd.
 - b. The said proprietary concern has been formed to provide investment advisory services for the existing clients of HBJ Capital as HBJ Capital has been debarred by SEBI vide its interim Order dated June 15, 2015.
 - c. All the employees of OSAR Capital were recruited by HBJ Capital. All the activities of OSAR Capital including marketing, sales, research, and client advisory services are

being provided by HBJ Capital and the employees/analysts appointed by them. The Noticee is not involved in any capacity in the entire process.

- d. Further, various e-mails sent by Kumar Harendra to the Noticee during the period of preliminary examination by SEBI, i.e. during October 2015, indicate that the details/information including, the details of employees, their salary statements, etc. sought by SEBI, and the replies provided by the Noticee to the queries raised by SEBI, had been forwarded to the Noticee by Kumar Harendra of HBJ Capital.
- e. The Noticee gave 15 blank signed cheques of OSAR Capital to Kumar Harendra to withdraw advisory fees deposited by the clients.
- f. HBJ Capital provided the investment advisory services through OSAR capital even after the SEBI Order dated June 15, 2015, wherein HBJ Capital was restrained from carrying out investment advisory services.
- g. A few employees of OSAR Capital viz. Mr. Ayub Khan, Mr. Joel Jose, Mr. Apurba Nath, Ms. Geetha Hiremath and Ms. Nagamma, were earlier employees of HBJ Capital. Further as per the bank statement details of OSAR Capital, payments have also been made to a few employees of HBJ Capital who are not employees of OSAR Capital. The details are as under:

Name of the employee	Date	Amount(in Rs)
Ramesh Chandra Jena	08.09.2015	300000
Jayatirtha G	08.09.2015	300000
Pawan Kumar Rai	15.09.2015	300000
Joel Jose	15.09.2015	300000
Rahul Tayal	15.09.2015	300000
MrinmoyChaterjee	15.09.2015	200000
Ramesh Chandra Jena	23.09.2015	300000
Girish V	30.09.2015	500000
Ayub Khan	30.09.2015	200000

Ramesh Chandra Jena	05.10.2015	300000
MrinmoyChaterjee	09.10.2015	750000
Pratibha Rao	13.10.2015	700000

h. An amount of Rs. 5,00,000/- was paid from OSAR Capital's bank account to Ms. Kumari Sonam, the sister-in-law of Kumar Harendra and director of OSAR Capital Services Pvt. Ltd.

i. Kumar Harendra vide his written statement dated November 06, 2015 stated: "HBJ came to know about Mr. Amit Ahire who holds registration as an investment adviser from SEBI. HBJ transferred the employees of HBJ to OSAR Capital (proprietorship firm of Mr. Amit Ahire) after August 2015. OSAR capital has separate offices and separate research team. HBJ used to provide mentorship to OSAR Capital and in fact HBJ was indirectly helping OSAR Capital to build their business. OSAR Capital has been formed by Mr. Amit Ahire, a SEBI registered investment adviser. Mr. Amit Ahire is getting salary as an employee".

j. HBJ Capital vide e-mail dated August 31, 2015 informed all their clients as under:

"The services will be resumed from today onwards. We have made arrangements with the help of 3rd party SEBI registered investment adviser only to provide services to their existing clients till HBJ Capital secures IA license."

11. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated March 17, 2016 against the Noticee with immediate effect:

i. "Mr. Amit Baburao Ahire (Proprietor- OSAR Capital) (PAN: AOFPA9923H and SEBI Registration No. INA000002660) are restrained from providing investment advisory services, either directly or indirectly, till further directions;

- ii. to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to their investment advisory activities.”

12. In the interim order it was stated that the Noticee 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 so desired. The Order further called upon the Noticee to show cause as why appropriate directions under Section 11 and 11B of the SEBI Act, 1992 and relevant SEBI Rules/Regulations including directions, prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period should not be issued against them for the alleged violations.

13. *Service of interim order and hearing notice:* The interim order dated March 17, 2016 was served on the Noticee vide letter dated March 18, 2016. Vide reply dated March 28, 2016, the Noticee submitted, *inter alia*, that:

- a. He had no intention to defraud anybody. He was offered an employment opportunity and he had taken it without any intention of misconduct.
- b. He had no authority to take decisions of OSAR Capital with respect to operation, sales, research, etc.
- c. He has no control over the advertisement, representation, literature, brochure, material, publications, documents, websites, etc. and all the data and its control are with Kumar Harendra.

14. *Hearing and submissions:* Vide public notification dated October 15, 2017, in the newspapers *The Times of India* and *Lokmat*, the Noticee was informed of the opportunity of personal hearing granted to him on November 7, 2017 at the time and venue mentioned therein. The Noticee appeared for the said personal hearing and made, *inter alia*, the following submissions:

- a) He was the proprietor of OSAR Capital and he was an employee of HBJ Capital Services Private Limited.
- b) All the activities of OSAR Capital were being carried out by HBJ Capital Services Private Limited.
- c) He was aware that HBJ had been restrained by SEBI from providing investment advisory services.
- d) He had received about Rs. 1,20,000/- as salary from HBJ Capital Services Private Limited.
- e) He was willing to return the aforesaid amount of Rs. 1,20,000/- which he received as unlawful gains from HBJ Capital Services Private Limited.

15. Vide reply dated November 20, 2017 the Noticee submitted *inter alia* that he was appointed as an employee of HBJ Capital and received a salary of Rs. 1,20,000/-. The Noticee has further expressed his willingness to refund the money to SEBI within 3 months of an order to that effect, on the ground that the income was generated due to unlawful conduct.

16. I have considered the allegations. I have perused the information received by SEBI, correspondence exchanged between SEBI and the Noticee, 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 the Noticee, Shri Amit Baburao Ahire, knowingly allowed HBJ Capital, an entity which had been prohibited by SEBI (vide Interim Order dated June 15, 2015) from continuing their investment advisory services, to provide investment advisory services to their existing clients through OSAR Capital, a proprietorship concern of the Noticee and whether the Noticee failed to inform SEBI of any material change in the information submitted at the time of registration.
- ii. If so, whether the Noticee through its Proprietary concern, OSAR Capital has violated Regulations 13(a) and 13(b) of SEBI (Investment Advisers) Regulations, 2013 and Clause

1 and 2 of the code of the conduct specified for investment advisers under schedule III of SEBI (Investment Advisers) Regulations, 2013.

iii. If the findings on Issue No. 2 are found in the affirmative, who is liable for the violation committed?

Issue No. 1: Whether the Noticee, Shri Amit Baburao Ahire, knowingly allowed HBJ Capital, an entity which had been prohibited by SEBI (vide Interim Order dated June 15, 2015) from continuing their investment advisory services, to provide investment advisory services to their existing clients through OSAR Capital, a proprietorship concern of the Noticee and whether the Noticee failed to inform SEBI of any material change in the information submitted at the time of registration.

17. I have perused the material available on record, including the details of the website, written and oral submissions, along with supporting documentary evidence, for the aforesaid allegation.

18. I note that vide interim order dated June 15, 2015, SEBI had restrained HBJ Capital from acting as an investment adviser. I further note from an email dated August 31, 2015 that HBJ has informed its clients as under:

“The services will be resumed from today onwards. We have made arrangements with the help of 3rd party SEBI registered investment adviser only to provide services to their existing clients till HBJ Capital secures IA license.”

19. I note that the Noticee is a SEBI registered investment adviser with SEBI registration number INA000002660 obtained on February 16, 2015. As admitted by the Noticee in his submissions during the personal hearing, OSAR Capital was his sole proprietorship firm. I note from the website and the registration certificate of OSAR Capital that the nature of business of OSAR Capital was investment advisory services. I also note that the website mentions the SEBI Registration number belonging to the Noticee as the registration number for OSAR Capital.

20. I note that the employees of OSAR Capital were recruited by HBJ Capital. I also note that some employees, such as Mr. Ayub Khan, Mr. Joel Jose, Mr. Apurba Nath, Ms. Geetha Hiremath and Ms. Nagamma, who were being paid salary by OSAR Capital, were in fact employees of HBJ Capital. I note that the Noticee had no say in the recruitment of employees at OSAR Capital. I further find from the bank statement details of OSAR Capital that payments were made to employees of HBJ Capital.
21. From the email correspondence between Kumar Harendra and the Noticee, I note that the details/information including, the details of employees, their salary statements, etc. sought by SEBI, and the replies provided by the Noticee to the queries raised by SEBI, had been forwarded to the Noticee by Kumar Harendra. Further, I note that fifteen blank cheques were forwarded by the Noticee to Kumar Harendra.
22. I note that from the submissions made by the Noticee, that the Noticee was paid Rs. 1,20,000/- by Kumar Harendra, Director of HBJ Capital and was also made a director of OSAR Capital Services Private Limited which was a Company formed by Kumar Harendra. I also note that an amount of Rs. 5,00,000/- was transferred from the bank account of OSAR Capital to Kumari Sonam, who is the sister-in-law of Kumar Harendra, and a director of OSAR Capital Services Private Limited.
23. I note from the written statement of Kumar Harendra dated November 6, 2015, that it has been submitted that:
- “HBJ transferred the employees of HBJ to OSAR Capital (proprietorship firm of Mr. Amit Ahire) after August 2015. OSAR capital has separate offices and separate research team. HBJ used to provide mentorship to OSAR Capital and in fact HBJ was indirectly helping OSAR Capital to build their business. OSAR Capital has been formed by Mr. Amit Ahire, a SEBI registered investment adviser. Mr. Amit Ahire is getting salary as an employee. (emphasis supplied)”*

24. However, in view of the above findings, I am of the view that the Noticee was not just an employee of HBJ Capital but had allowed HBJ Capital to carry out investment advisory services by using his SEBI registration number through OSAR Capital which was his own sole proprietorship. I find that the Noticee has knowingly and willingly allowed HBJ Capital, to provide investment advisory services using his SEBI registration and in the name of his sole Proprietary concern OSAR Capital.
25. I also note that OSAR Capital was providing investment advisory services and was using the SEBI Registration number belonging to the Noticee. I find that the said information was not intimated to SEBI till information was sought from the Noticee vide email dated October 13, 2015. I note that vide email dated October 15, 2015, the Noticee has submitted that the failure to intimate was not intentional and since there was no timeline, the Noticee intended on notifying SEBI in a couple of months. In this regard I observe that the Noticee was registered with SEBI as an investment adviser on February 16, 2015 and that OSAR Capital was formed on August 24, 2015. The material change in the usage of Noticee's certificate of registration, i.e. the registration was now being used for his sole proprietorship firm instead of being used in an individual capacity for which certificate of registration was granted, was notified by the Noticee only on October 13, 2015, that too only at the behest of SEBI. I find that OSAR Capital had already begun operating as an investment advisor and offering its services based on the SEBI registration of its proprietor. SEBI has put in place certain checks, balances and reporting requirements through its various Regulations in the interest of protecting the interest of the investors, and to ensure that no unregistered/misleading services are being offered which could be detrimental to the investors. In view of the above, the submission of the Noticee cannot be accepted as that would be counterproductive towards the interests of investors, thereby rendering the provision of informing SEBI redundant.
26. In view of the above findings, I note that the Noticee vide his email dated October 13, 2015, had stated that investment advisory services for all the clients of OSAR Capital, was being provided by him directly with the help of two research analyst. This was however, retracted vide email dated October 27, 2015 wherein it was stated that HBJ Capital was involved in providing the investment advisory services in the name of OSAR Capital. From the above I

find that the Noticee has provided misleading and contradicting information to SEBI when called upon to file his submissions.

Issue No. 2: If so, whether the Noticee through its Proprietary concern, OSAR Capital has violated Regulations 13(a) and 13(b) of the IA Regulations and Clause 1 and 2 of the code of the conduct specified for investment advisers under schedule III of the IA Regulations?

27. In terms of regulations 13(a) and 13(b) of the IA Regulations, the certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:

*“(a) the investment adviser shall abide by the provisions of the Act and these regulations;
(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;”*

28. Further, in terms of Clauses 1 and 2 of the code of conduct specified under third schedule of IA Regulations:

*“**Clause 1:** 'an investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market'.*

***Clause 2:** 'an investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives'.”*

29. As observed in paragraph 25, I find that the Noticee has failed to notify SEBI about the material change in information with relation to his Registration under the IA Regulations in a timely manner. In this regard I note that the provision of the Regulation 13(b) of the IA Regulation states that the “investment adviser shall forthwith inform the Board in writing, ... if there is any material change in the information already submitted. (emphasis supplied).” I am of the view that the purpose behind drafting this provision was not to allow for any lapse of time

before informing SEBI of any material change in information, as that might unduly compromise the interests of investors. I note that nearly two months had elapsed before the Noticee informed SEBI; that too upon receiving an email from SEBI seeking information. In view of the above, even in light of the fact that no timeline has been mentioned specifically in the IA Regulations, the Noticee had the statutory duty to inform SEBI within reasonable time before offering services through its proprietorship concern using his registration number. Therefore, I find that the Noticee is in violation of the conditions of the registration certificate as specified in regulations 13(a) and 13(b) of the IA Regulations.

30. Further, I find that the Noticee has allowed HBJ Capital to continue providing investment advisory services using his SEBI Registration number, and through his sole proprietorship concern OSAR Capital. By virtue of this he has aided HBJ Capital in circumventing the interim order dated June 15, 2015 which is against the clause 13(a) of the IA Regulations, as the investment adviser is required to comply with the provisions of the Act and Regulations as part of the conditions of certificate of registration as Investment Adviser. I further find that the Noticee has failed to exercise due skill, care and diligence and has acted dishonestly, allowing the integrity of the securities market to be compromised by allowing a restrained entity to continue providing investment services. In view of the same, I find that the Noticee is in violation of the Clauses 1 and 2 of the Code of Conduct specified for investment advisers under the third schedule of the IA Regulations. No reply controverting the aforesaid has been filed by the Noticee in this regard.

Issue no. 3: If the findings on Issue No. 2 are found in the affirmative, who is liable for the violation committed?

31. In view of the foregoing, the Noticee is liable for the aforesaid violations of regulations 13(a) and 13(b) of the IA Regulations and the Clauses 1 and 2 of the Code of Conduct specified for investment advisers under the third schedule of the IA 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 the Noticee.

32. Since the Noticee has admittedly been paid a compensation of Rs. 1,20,000/- and has expressed his willingness to return the said amount on account of its unlawful nature, it would be reasonable that the said amount is liable to be disgorged. As stated, the Noticee is willing to surrender the said illegal gain.
33. 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 authorized 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.
34. 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.
35. In view of the discussion above, appropriate action in accordance with law needs to be initiated against the Noticee. 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 Amit Baburao Ahire, and OSAR Capital (sole proprietorship concern of Shri Amit Baburao Ahire) shall surrender the unlawful gain of Rs. 1,20,000/- within a period of 3 months by way of a Demand Draft drawn in favour of “Securities and Exchange Board of India” or by way of an e-payment to the beneficiary account name “Securities and Exchange Board of India,

Beneficiary A/c. no. 012210210000008, Bank of India, Bandra-Kurla Complex, RTGS Code: BKID0000122. Shri Amit Baburao Ahire, either on his own or through any body corporate is directed not to, directly or indirectly, access the securities market, and Shri Amit Baburao Ahire through his sole proprietary concern including OSAR Capital, 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 payment of the money.

b. Shri Amit Baburao Ahire, either on his own or through any proprietary concern including OSAR Capital, or through anybody corporate or partnership firm, shall not undertake, 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 after the expiry of period of debarment as mentioned in paragraph 35(a).

c. In case of failure of Shri Amit Baburao Ahire, or his proprietary concern, OSAR Capital to pay the aforesaid amount, on the expiry of three months period from the date of this Order may recover such amounts, from the said Noticee liable to refund as specified in paragraph 35(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

d. The above directions shall come into force with immediate effect in respect of other noticees.

36. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories, registrar and transfer agents, for information and necessary action.

DATE: January 10, 2018

PLACE: Mumbai

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