

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
CONFIRMATORY ORDER**

Under Sections 11(1), 11(4), 11B(1) and 11D of the Securities and Exchange Board of India Act, 1992

In Re: Violation of provisions of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

In respect of:

Name of the Entities	PAN
Smart Investment Services – Ms. Rinkee Prajapati	CIFPP0285H

Background:

1. Securities and Exchange Board of India (“SEBI”) received complaints against certain entities alleged to be involved in unauthorized Investment Advisory activities. Based on the information submitted by the complainants, bank statements, Know Your Client (“KYC”) and Account Opening forms (“AOF”) were sought from the respective banks/payment gateways. On examining the complaints, it was observed that 12 entities were having live websites on which they were, *prima facie*, holding themselves out as Investment Advisers (“IA”). One of these 12 entities was Smart Investment Services/ Care Investment Services Pvt. Ltd., Proprietor Ms. Rinkee Prajapati (hereinafter referred to as the “**Noticee**”).
2. The details of the complaint received against the Noticee are as below:

- 2.1. Mr. Amrinder Pal Singh Sehgal ("Complainant"), *inter alia*, alleged that he had paid Rs.5000/- through PayUMoney on March 14, 2019, to an entity named Care Investment Services Pvt. Ltd. The complainant, *inter alia*, alleged that its SEBI registration number, any bill or email confirming the payment and support was not given.
- 2.2. The complainant also provided information about company's name, website, email ID and contact no. The complainant also attached payment receipt in connection with the payment made to Care Investment Services Pvt. Ltd. and copy of the email forwarded to Care Investment Services Pvt. Ltd. requesting refund of his money.
- 2.3. The PayUMoney receipt provided by the complainant and the KYC details provided by PayUMoney mentioned the merchant name as *Smart Investment Services* and account number as ICICI Bank Account No. 338905000056.
3. An analysis of the complaint received against the Noticee and of the respective bank statements, KYC and AOF was carried out. Pursuant to the examination, an interim order dated February 07, 2020, was passed, *inter alia*, against the Noticee. In the said interim order, the following was observed, in the case of the Noticee:
- 3.1. Rinkee Prajapati is the proprietor of Smart Investment Services. In the KYC/ AOF of the ICICI Bank account, the type of account has been mentioned as 'Current' and Nature of Business as 'Trading.'
- 3.2. During the preliminary examination, the website was live and reflected the bank account details/ payment gateway through which the investors desirous of availing its services could make direct payment. Payment gateways such as PayUMoney, Paytm, etc. and direct transfers to the bank account reflected on the website were used for receiving payments, *inter alia*, towards subscription fee/ product

purchase from investors. Further, it was observed that continuous credits have been received in the ICICI bank account of the Noticee.

3.3. From the ICICI Bank account statement of M/s. Smart Investment Services, it was observed that Rs. 1,23,17,120/- had been credited during the period July 6, 2017, to October 9, 2019. It is also observed that various credits have been received from payment gateways.

3.4. It was also noted that there is no company in the name of *Care Investment Services Pvt. Ltd.* and it is only a proprietorship concern. An internet search made in the name of 'Care Investment Services' showed its website - www.careinvestmentservices.com. Care Investment has mentioned on the website that, "**Care Investment Services**" is formed with a vision of "financial freedom to everyone" that will be gained by investment in the different financial securities & product, whether growth based or income based after proper analysis and scrutiny of information publicly available about the securities, investment product, bonds etc. We have variety of services for Traders & Investor that are detailed in Service section. There are a wide variety of clients that employ the services of investment advisers. Clients fall into two broad categories: individuals and institutions. The first category includes: individuals, trusts, families, and groups of families. Wealth n value Investment adviser focus on Individual client based on age and financial status, as the financial goals and risk profiling is highly influenced by these factors." The payment option on website reflects various Bank details of SBI, HDFC Bank, ICICI Bank, Axis Bank, IDBI Bank and Punjab National Bank. It offers recommendations in Cash, Futures, Options, Index, Bullions, Metals and Energy.

4. It was further observed, in the interim order, that the Noticee was not registered with SEBI as an investment adviser. The activity of the Noticee, through its website, of holding itself out to be giving advice/ recommendation in relation to securities being

traded in the securities market to the investors and general public, and payment receipts of the complainant indicating the payment was made for receiving investment advice, the bank statement, *prima facie*, showing the credit, *inter alia*, for payment of fees, indicated that there is a preponderance of probability that the Noticee, apart from holding itself out as investment advisor, has acted as an investment advisor for consideration.

5. As the Noticee is not registered with SEBI in the capacity as an investment advisor and the characteristics and features of the business activity carried out by it, *prima facie*, led to the conclusion that it was holding itself out and providing services as an investment adviser, as defined under Regulation 2(m) of the IA Regulations, it was, *prima facie*, held that the activities of the Noticee are in violation of Section 12(1) of SEBI Act read with Regulation 3 (1) of the IA Regulations.
6. It was further, *prima facie*, held that the Noticee knowingly concealed the fact that it was not registered with SEBI as an investment advisor and was also making representations on its website in a reckless and careless manner about its expertise in investment advisory thereby luring and inducing investors to deal in securities by availing their services. Such *modus operandi* is being continuously used by the Noticee, which is evident from the fact that there were continuous credits in its bank account and the website was also live. The said interim order, further, *prima facie*, found that the deceptive activities of the Noticee are fraudulent and are covered under the definition of 'fraud' under Regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations"). Therefore, it was, *prima facie*, held that the Noticee has contravened provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (b), (c) and (d) and 4(1) and 4(2) (k) of the PFUTP Regulations.
7. In view of the above, the following directions were passed against the Noticee:

- 7.1. *The Noticee shall cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any manner whatsoever, until further orders.*
- 7.2. *The Noticee shall not access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.*
- 7.3. *The Noticee shall not divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.*
- 7.4. *The Noticee shall not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.*
- 7.5. *The Noticee shall immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc., in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.*
- 7.6. *The Noticee shall provide a full inventory of all assets held in the name of the proprietorship or the proprietor and firm or the partner, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.*
- 7.7. *Any person while working under the Noticee as employee or otherwise, shall cease and desist from undertaking the activity of investment advisory services,*

including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.

7.8. The Banks are directed not to allow any debits/ withdrawals from or credits to the accounts of the Noticee, held jointly or severally, without the permission of SEBI. The Banks are directed to ensure that all the above directions are strictly enforced.

7.9. The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of the Noticee held jointly or severally.

7.10. The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Fund units, held in the name of the Noticee, jointly or severally, are not transferred or redeemed.

8. The Noticee was given 21 days from the date of the interim order to file their objections, if any, and, if they so desire, avail an opportunity of personal hearing before SEBI.

9. The Noticee, vide letter dated March 3, 2020, sought a personal hearing and a date of June 30, 2020, was granted for personal hearing. However, the Noticee, vide letter June 27, 2020, sought an adjournment due to Covid-19 pandemic related reasons. An adjournment was granted and a new date of July 16, 2020, was granted for personal hearing.

10. Vide letter dated July 15, 2020, the Noticee has submitted the following:

10.1. The Noticee admitted that she was engaged in investment advisory services without obtaining necessary registration from SEBI, as required under Regulation 3(1) of the IA Regulations.

10.2. The Noticee denied the allegation for involvement in fraudulent activities under Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (b), (c) and (d) and 4(1) and 4(2) (k) of the PFUTP Regulations.

10.3. The default made was in the nature of non-compliance and there was no fraudulent intention of the Noticee to cheat or to act in a deceptive manner or to cause any loss to investors or group of investors or to the securities market.

10.4. The Noticee, neither by herself nor through others, represented herself as a registered IA and never concealed the fact or lied to its clients regarding the status of her registration with SEBI.

10.5. The advice given to the clients were purely on the basis of technical analysis with the bonafide intention to optimize their gains in the securities market. The same were given to clients to deal in securities were at arm's length and Noticee did not have any direct or indirect relation/ involvement/collusion with anyone related with the companies of which the securities recommended for investment.

10.6. There is no complaint filed against the Noticee of any nature whatsoever, let alone fraud or cheating, with SEBI or on any other forum or any other authority, except the one referred to in the order.

10.7. With respect to complaint of the complainant, the Noticee submitted that:

10.7.1. Money was given through the website www.careinvestmentservices.com which is owned by the Noticee and the receipt of such payment is not denied. Payment was made through PayUMoney.

10.7.2. Noticee had no procedure to issue separate receipt for payments collected through PayUMoney as automated receipt is already

generated and sent to the payee. Noticee does not deny the collection of fee/subscription from any of her clients.

10.7.3. After receipt of subscription fees, the service was duly provided on timely basis via messages. Calls and grievances of the complainant were addressed on timely manner.

10.7.4. When complainant was still dissatisfied with the services, as per mutual understanding, the subscription amount was refunded. Thereby, Noticee has not acted in any deceitful manner or in a manner to cause harm to the complainant.

10.7.5. The Noticee has never purported herself as a SEBI registered IA and as she has not obtained the registration from SEBI, the registration number was neither mentioned anywhere, including the website or other documents, nor provided to the complainant.

10.7.6. The Noticee also clarifies that the firm name is M/s Smart Investment Services and the website name is www.careinvestmentservices.com. Mention of M/s Care Investment Services Pvt. Ltd. was a typographic error, which the Noticee could not rectify due to oversight.

10.8. The Noticee is also engaged in business of providing IT related services and supplies to government agencies and local bodies by participating in tendering process. Therefore, the ICICI bank account primarily was opened for conduct of aforesaid business. However, later this account was used for IA activity too.

10.9. The credits from July 06, 2017, till Oct 09, 2019, in the ICICI bank account was Rs. 1,23,17,120/-, including credits from PayUMoney payment gateway. The Noticee would like to clarify that these credits include transactions other than IA activities pertaining to supplies of IT services to local municipal body.

10.10. The Noticee believes that, inspite of the fact that she operated as an unregistered IA, she did not act in any manipulative/deceptive manner and did

not employ any device, scheme or artifice to defraud investors and engage in any act so as to defraud and deceive any person in connection with the securities market.

11. The personal hearing took place on July 16, 2020, and during the personal hearing, the authorized representatives of the Noticee reiterated the submissions made vide letter dated July 15, 2020. The Noticee was advised to inform if it had any evidence available to show that it had told the complainant that it is not registered with SEBI as an investment adviser. The Noticee was also advised to produce a document which certified the nature of each and every transaction in the ICICI Bank account, along with additional documents to substantiate its submission that the money received in the bank account was also for activities other than unregistered investment advisory activities.
12. The Noticee has submitted its reply vide letter dated July 23, 2020, and its submissions are as follows:
 - 12.1. With regard to the complainant, there was no communication regarding its status of SEBI registration as an IA. However, the Noticee would like to assert that it never claimed itself to be a SEBI registered IA and it has not deliberately hidden the information regarding status of its registration with the complainant or with anyone else.
 - 12.2. A summary of payments credited in the ICICI Bank account pertaining to payments credited other than financial advisory activities (in the form of an MS Excel file).
13. In light of the abovementioned submissions, the Noticee has prayed that a lenient view may be taken while considering penal action against it for non-registration as an IA and to absolve it from the allegations w.r.t. PFUTP Regulations.

Consideration of Issues:

14. I have considered the submissions of the Noticee and the issue to be considered at this stage is whether, in light of the facts and circumstances of the case, the findings of the interim order and submissions of the Noticee in response thereto, the directions issued against the Noticee vide the interim order need to be confirmed, revoked or modified in any manner.
15. I observe that the Noticee has accepted that it was engaged in providing investment advisory services without obtaining the necessary registration of SEBI as required under Section 12(1) of the SEBI Act, 1992, and Regulation 3(1) of the IA Regulations. The, *prima facie*, materials, as examined in the interim order, indicate that the Noticee is acting as an Investment Adviser, without registration from SEBI. In addition to that, the Noticee has also admitted to the same. In view of this, the charge of providing investment advisory services without obtaining the necessary registration of SEBI, as required under Section 12(1) of the SEBI Act, 1992, and Regulation 3(1) of the IA Regulations, stands confirmed against the Noticee.
16. The Noticee has also submitted that while it addressed the calls and grievances of the complainant in a timely manner, when the complainant was still dissatisfied with the services, as per mutual understanding, the subscription amount was refunded. However, I note that no evidence of having provided a refund to the complainant has been furnished by the Noticee. Further, even if refund to the complainant has been provided, it would not change the nature of the unregistered investment advisory services provided by the Noticee.
17. I observe that the Noticee has denied the charge that it has violated provisions of the PFUTP Regulations by indulging in fraudulent activities. In the present case, I observe that the Noticee has represented on its website that it is an expert in stock market analysis and is experienced in investment advisory services. I note that no

evidence to substantiate these claims has been provided by the Noticee. With respect to the complainant, the Noticee has confirmed that there was no communication with the complainant regarding its status of SEBI registration as an investment adviser.

18. Further, the Noticee has contended that it has not represented itself as a SEBI registered investment advisor. The Noticee has been acting as an unregistered investment adviser and collecting funds for the same since July 2017. It is reasonable that all investors would form a bonafide belief that any entity, which is portraying itself as providing investment advisory services, would be registered and supervised by SEBI under the IA Regulations, especially since these Regulations have been in force since April 2013. The Noticee has also not adduced any material on record to show that it has expressly communicated to its clients/ prospective investors that it is NOT registered with SEBI as an investment adviser. I am of the view that the same is tantamount to knowingly concealing a fact that it is not registered with SEBI, which the Noticee knew to be not true. Further, in the absence of any material to justify its experience and expertise in investment advisory service, I find that its representation of being an expert in stock market analysis and experience in investment advisory services is an act as part of its schematic ploy to induce the investors for receiving its services. Such an act also amounts to fraudulent behaviour especially in the context of its unregistered activity.

19. In view of the above, I am not inclined to accept the submission of the Noticee that it had no fraudulent intention to act in a deceptive manner, as knowingly concealing its registration status and reckless representation of its experience and expertise for the purpose of inducing the investors would constitute “fraud”. Therefore, I hold that the Noticee has, *prima facie*, violated provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (b), (c) and (d) and 4(1) and 4(2) (k) of the PFUTP Regulations.

20. Further, it was observed in the interim order that the ICICI Bank account of the Noticee had received credits amounting to Rs. 1,23,17,120/- from July 06, 2017, till Oct 09, 2019, and these included credits from PayUMoney payment gateway. The Noticee has contended that these credits include transactions other than IA activities pertaining to supplies of IT services to local municipal bodies. In this regard, the Noticee was advised to submit a document which certified the nature of each and every transaction in the ICICI Bank account, along with additional documents to substantiate its submission that the money received in the bank account was also for activities other than unregistered investment advisory activities. I note that the Noticee has merely submitted an Ms-Excel file, which contains certain credit entries and against each entry, the Noticee has mentioned certain remarks as to their nature.
21. I note here that further examination in the matter is pending and the exact amount collected by the Noticee through its act of providing unregistered investment advisory services is yet to be determined. The, *prima facie*, findings in respect of the collection of money, is to render a finding on the fact that certain amount of money was collected for the purpose of rendering investment advisory service. The actual amount of money collected, is subject to the further fact finding and pending examination. The submissions of the Noticee regarding the nature of the credits received in the bank account shall be considered during the fact finding examination in order to ascertain the amount of money collected as an unregistered investment adviser, for a possible action of refund to the investors. The consideration of these materials for crystallisation of money collected at this stage cannot be entertained as the fact finding examination is still in progress and the Noticee has failed to provide any evidence to corroborate its claims regarding the source of funds in the bank account. However, non-consideration of those materials at this stage does not change the, *prima facie*, finding that certain amount of money was collected by the Noticee for rendering unregistered investment advisory service. The same has also been admitted by the Noticee.

22. The Noticee has accepted that it was offering unregistered investment advisory services. It has also been held that the activities of the Noticee were fraudulent in nature. Therefore, as the Noticee has already evaded the jurisdiction of SEBI by acting as unregistered investment adviser, the balance of convenience is not in favor of revoking/ modifying the directions issued against the Noticee vide the interim order. Accordingly, at this stage no case is made out by the Noticee for allowing its prayers.

Order:

23. In view of the foregoing paragraphs, pending detailed examination, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11(1), 11(4), 11B(1) and 11D thereof, hereby confirm the directions issued vide ex-parte ad interim order dated February 07, 2020, against the Noticee, Smart Investment Services, Proprietor Ms. Rinkee Prajapati (**PAN: CIFPP0285H**).

24. This Order shall come into force with immediate effect. A copy of this Order shall be served upon the Noticee, Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Sd/-

Date: September 09, 2020

Place: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA