

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF CAPITAL HEED FINANCIAL RESEARCH

In respect of

Sl. No.	Name of the Noticee	Registration Number	PAN
1.	Capital Heed Financial Research (Proprietor Mr. Shailendra Sen)	INA000009418	BUXPS9559Q

1. The present proceedings emanate from an *ex-parte ad interim* order dated November 18, 2019 (hereinafter referred to as “**the interim order**”) passed by the Securities and Exchange Board of India (hereinafter referred to as “**the SEBI**”) under Sections 11, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**the SEBI Act**”) and regulation 35, Chapter VI of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as “**the Intermediaries Regulations**”) against Capital Heed Financial Research and its proprietor Mr. Shailendra Sen (hereinafter referred to by “**Capital Heed, his name** or as **the Noticee**”). The *Noticee* is registered as an Investment Adviser (hereinafter referred to as “**IA**”), under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**the IA Regulations**”), vide Registration No. INA000009418, with effect from December 29, 2017, having its office at 230, PU4, Scheme No. 54, Indore, Madhya Pradesh, 452010. Its website address is www.capitalheed.com.
2. The brief facts leading to passing of the *interim* order are as under:
 - a. Pursuant to complaints lodged in the SEBI Complaints Redress System (hereinafter referred to as “**SCORES**”) against Cash Cow Broking & Advisory Solution (hereinafter referred to as “**Cash Cow**”) *inter alia* alleging that Cash Cow has given investors a

commitment of assured returns, SEBI conducted an examination into the affairs of Cash Cow.

- b. During the said examination, the Bank Account Opening Forms (hereinafter referred to as “**AoFs**”) and Know Your Client (hereinafter referred to as “**KYC**”) documents of Cash Cow revealed that one of the three partners of Cash Cow, i.e., Mr. Shailendra Sen is also currently registered with SEBI as an Investment Adviser (hereinafter referred to as “**IA**”) under the sole proprietorship named and styled as Capital Heed Financial Research (hereinafter referred to as “**Noticee/ Capital Heed**”).
 - c. In this respect, the examination of the application dated September 11, 2017 filed by the *Noticee* with SEBI while seeking registration as investment adviser was also undertaken and it was noticed that Mr. Shailendra Sen, the sole proprietor of the *Noticee* Firm had declared in the said application that he was not engaged in any investment advisory services prior to making such application for registration of *Capital Heed* as an IA. In view of the *prima facie* finding in the *interim* order that Mr. Shailendra Sen, through his partnership firm Cash Cow, had already indulged in unregistered investment advisory activities, it was observed that he has *prima facie* knowingly made false statement/declaration in the application form for registration as IA by stating that he was not engaged in any investment advisory services prior to making such application and accordingly did not disclose his association as a partner in Cash Cow.
 - d. During the examination, it was also observed from the website of the *Capital Heed* that the *Noticee* is claiming to offer Portfolio Management Services (hereinafter referred to as “**PMS**”) and also claims to have over a decade long experience in providing PMS whereas the *Noticee* is registered with SEBI only in the capacity of an investment adviser. Therefore, it has been alleged that the *Noticee* is *prima facie* misrepresenting to prospective investors that it can provide PMS for which it does not hold the certificate of registration from SEBI to carry the activity of PMS.
3. It is pertinent to note that the extant *interim* order primarily deals with Mr. Shailendra Sen (who was also a partner in Cash Cow) and his proprietorship i.e., *Capital Heed* which is registered with SEBI as an investment adviser. I notice that the matter against Cash Cow is being dealt with in a separate proceeding before another quasi-judicial authority in SEBI.
 4. Based on the aforesaid *prima facie* findings in the *interim* order, as the *Noticee* was apparently found to be in violations of the provisions of regulation 13, Clauses 1 and 8 of the Code of Conduct as specified in Third Schedule read with regulation 15 (9) of the IA Regulations and regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as

“PMS Regulations”), the *interim* order referred to above was issued against the *Noticee* with the following directions in order to protect the interest of investors of securities market:

- a. *The Noticee, and any person while working under him or under his instructions as employee or otherwise, shall cease and desist from soliciting/ acquiring any fresh clients for investment advisory services, directly or indirectly, till further orders.*
 - b. *The Noticee, and any other person while working under him or under his instructions as employee or otherwise, shall cease and desist from offering any new investment advisory services to its existing clients for which fresh payment is required to be made by these clients. It is clarified that the services for which the existing clients have already made payment to the Noticee shall be duly delivered to these clients and no renewal of these services shall be permitted.*
 - c. *The Noticee, and his representatives, as defined in Regulation 2(1)(r) of the SEBI (Investment Adviser) Regulations, 2013, shall discharge all their obligations, as required under these Regulations, towards the existing clients in respect of the investment advisory services that it has to deliver as mentioned in para 27 (b) above.*
 - d. *The Noticee shall remove all references regarding his holding out as a portfolio manager made by him through any media (physical or digital).*
 - e. *The Noticee shall circulate a copy of this Order to all its existing clients and display the contents of the same on its website immediately.*
5. The *interim* order was passed *ex-parte* in the facts of the matter asking the *Noticee* to file his objections, and also to indicate if it needs an opportunity of personal hearing before SEBI.
 6. Vide letter dated December 5, 2019 the *Noticee* made certain submissions in his defense and also requested for an opportunity of personal hearing. In compliance with the Principles of Natural Justice, an opportunity of personal hearing was granted to the *Noticee* on October 14, 2020, wherein the *Noticee* appeared in person for personal hearing conducted through Video Conferencing and made oral submissions on the lines of its earlier reply filed in the matter. During the course of hearing, the *Noticee* admitted the fact that investment advisory services were being provided through Cash Cow. He further stated that the marketing of PMS was done inadvertently on the website of *Capital Heed* for the purpose of attracting more clients for investment advisory services, however, no such services pertaining to PMS were ever provided to any client in pursuance of the said assertion.
 7. During the course of hearing, certain queries pertaining to the credit entries of funds received in the accounts of Cash Cow as mentioned in the *interim* order, were sought from the *Noticee*.

He was also asked to furnish explanation as to why the details of his past indulgence as IA in Cash Cow was not disclosed and was concealed while applying for registration of *Capital Heed* as an investment adviser. Accordingly, the *Noticee* was advised to submit his response on the aforesaid queries including confirmation of his admission made during the personal hearing that investment advisory services were indeed provided by him through Cash Cow. In response to the said queries, the *Noticee* through its letter dated October 29, 2020 has filed its response and has submitted its post hearing submissions as well.

8. The arguments advanced by the *Noticee* through its written as well as oral submissions are summarized herein below:

- 8.1 Pursuant to receipt of the *interim* order, necessary compliances have been made forthwith both in letter and in spirit.
- 8.2 The *prima facie* observations in respect of Cash Cow should not be interpolated to prejudice his certificate of registration as an investment adviser under *Capital Heed*. The facts and circumstances of both Cash Cow and *Capital Heed* are different and the *Noticee* has always cooperated with SEBI as regards their enquiry against Cash Cow.
- 8.3 The observations and findings made in respect of Cash Cow in the *interim* order has no bearing on the issue of IA registration certificate acquired by him/*Capital Heed* and only issue that needs to be looked into is whether Cash Cow was in existence and that it continued operation as on September 11, 2017 when the said IA 'Form-A' was filed by him and whether he was under an obligation to disclose that he was a partner in Cash Cow in the said form.
- 8.4 By way of Partnership Deed dated September 5, 2012 a partnership firm in the name and style of Cash Cow came to be constituted initially comprising two partners. The third partner joined on October 15, 2014.
- 8.5 The *Noticee* was never in active management and was not in the know of the actual affairs of the partnership. Further, all the partners including the *Noticee* were young individuals operating from Indore in Madhya Pradesh and were unaware of the recent legal and regulatory changes as regards the investment advisory business.
- 8.6 At the time of filling the application dated September 11, 2017 under 'Form-A' for grant of certificate of registration as an investment adviser, both of his statements that he was not engaged in investment advisory services prior to the same and he was not a partner in Cash Cow were true to the best of his knowledge for the following reasons:
 - a. The partnership firm namely Cash Cow had become defunct sometime in February 2017. By a deed of dissolution of partnership dated March 29, 2017, the said

Partnership was formally dissolved. After a period of 6 months, he applied for registration as an Investment Adviser on September 11, 2017 and that point in time, he was neither a partner of Cash Cow nor any such entity was existing on the said date.

- b. Cash Cow was registered and acting as an Authorized Person (hereinafter referred to as “**AP**”) of Angel Broking Pvt. Ltd. and was not engaged in investment advisory services. All the complaints and *prima facie* case of SEBI as regards the *Noticee* acting as a partner of Cash Cow providing investment advisory services are *prima facie* observations and sub-judice for adjudication.
 - c. Assuming but without admitting that Cash Cow was engaged in investment advisory services, the services were being provided under a genuine and *bona-fide* belief that the said business was well within the scope of work of an AP of a sub-broker and that Cash Cow was not required to obtain any separate registration as investment adviser and that they were not in violation of any SEBI Regulations.
 - d. As soon as it has been pointed out that the business of Cash Cow was being carried out without a mandatory IA registration and/or License, the *Noticee* soon realized that the said business did not constitute as a lawful investment advisory business. Hence, the question of disclosure of him as a partner of Cash Cow being in investment advisory did not arise.
- 8.7 All the activities of *Capital Heed* are of pure investment advisory nature and there is nothing in the *interim* order to suggest that he has carried out any PMS and all the inadvertent references to the same on the website have already been removed.
- 8.8 The *interim* order has wrongly mentioned that Cash Cow carried out operations till October 2017 and the transactions details reproduced in the *interim* order are incorrect.
- 8.9 Since registration of *Capital Heed* as an IA was *w.e.f* December 29, 2017 all the activities are being carried out in a *bonafide* and honest manner and in strict compliance of IA Regulations and other relevant/applicable SEBI laws.
- 8.10 The para-wise reply to the *interim* order is as under:
- a. Contents of paras 1-2 and 14-15 of the *interim* order are a matter of record and the *Noticee* has no comments to offer as such.
 - b. Further, the contents of paras 4 to 13 of the interim order are *prima facie* observations pertaining to affairs of Cash Cow and the *Noticee* has already provided his explanation on the same to the extent it is relevant to the present proceedings.

- c. In response to the contents of paras 16 and 21, it is submitted that the *Noticee* has abided by all the conditions of IA certificate and whatever stated by him in the said 'Form-A' was true and correct to the best of his knowledge and that if at all, there has been any inadvertent mis-statement, the same is an unintentional error on his part which he may be allowed to rectify. Further, there are absolutely no observation which is detrimental to the integrity of the capital markets, as no statement was made or information concealed knowingly with any *malafide* intent while obtaining the IA registration. The *bona fide* are reflected from the fact that the *Noticee* was the only partner of Cash Cow who has responded to the SEBI's inquiry. Further, all the references of PMS have been removed and also the *interim* order has been displayed on its website.
- d. With regard to paras 22 and 23 of the *interim* order, it is submitted that the *Capital Heed* has not been involved in transactions pertaining to PMS and the same may be verified by SEBI in the open market or from the clients of the *Capital Heed*.
- e. The *Noticee* is willing to co-operate as regards any detailed examination. The unintentional *bona-fide* error on his part in one caption of the 'Form A' is a solitary error, technical in nature and does not warrant an exercise of SEBI powers to pass *interim* order which in effect is virtually destroying the business especially when for the last two years of the operation as an IA, no complaints of any wrongdoings which in any way have affected the safety or integrity of the securities market has been received.

8.11 The account number- 915020050222831 of Axis Bank mentioned in the *interim* order is incorrect as this account number does not belong to Cash Cow or any of the partners. Also, the transaction period of the aforesaid bank account is incorrect as Cash Cow had stopped all the work by February 27, 2017 and not received credits thereafter, as has been orally submitted in this regard. Further, none of the partners of Cash Cow has received any amount on behalf of Cash Cow to their personal bank accounts ever. In this respect a separated notice dated March 12, 2020 has been issued by SEBI in the matter of Cash Cow, which also refers to the incorrect transaction period as well as the above noted incorrect account number of Axis Bank.

8.12 A due compliance has been made with the directions passed in the *interim* order. After the *interim* order was passed, for the last one year the work has been totally closed as the *Noticee* has neither taken a single rupee from any fresh and existing clients in the bank

accounts of *Capital Heed* nor even in his personal or any other accounts ever. The *Noticee* is only serving the existing clients for last one year till date.

- 8.13 A clear instruction has been given to employees to provide right information to the client about all areas which affect the clients' decision making for availing the service of *Capital Heed*. The *Noticee* has also put the disclaimer on its website and all these activities were done by the *Noticee* before the *interim* order was passed.
- 8.14 The *Noticee* has also passed the examination i.e., Investment Adviser Level 1 and Level 2, a second time before previous certificate got expired.
- 8.15 At the time of submission of the documents, the *Noticee* was not specifically asked if he was ever involved in investment advisory however, the IA application form did mention, if the *Noticee* was involved in investment advisory services prior to applying for the registration for new company that holds true, as the *Noticee* was into construction work only, at the time of making the application. The *Noticee* might have misunderstood the clause and the declaration was made under *bonafide* believe for which he sincerely tenders apologies and assures to abide by the requisite provisions of the IA Regulations.
9. I have carefully perused the facts recorded in the *interim* order, the submissions advanced on behalf of the *Noticee* and other materials available on record. It is noted that the matter against Cash Cow is being dealt with under a separate proceeding and the scope and limitation of the *interim* order requires me to deal with the allegations made against the *Noticee* Firm and its sole proprietor Mr. Shailendra Sen (who was also a partner in Cash Cow) registered with SEBI as an investment adviser. In this regard, I also refer to the contention of the *Noticee* that the facts and circumstances of both Cash Cow and *Capital Heed* are different. Therefore, the arguments advanced by the *Noticee* pertaining to Cash Cow which is being dealt with under a separate and independent proceedings pending before a different quasi-judicial authority in SEBI are outside the scope of the proceedings at hand and are thus not being dealt with in this order as contended by the *Noticee*. In view of the aforesaid, I note that the limited issues that require adjudication in the extant proceedings in light of the charges so levelled are as under:

- i. Whether the Noticee through its sole proprietor Mr. Shailendra Sen had provided false/misleading information to SEBI while applying and obtaining certificate of registration under IA Regulations for his proprietorship firm Capital Heed, stating that he was not engaged in investment advisory services prior to making the said application and whether he also failed to disclose that earlier as a partner of Cash Cow, he was providing unregistered investment advisory service even after the certificate of registration for Capital Heed was granted to him.***

ii. Whether Capital Heed was further, engaged in activities related to PMS by advertising on its website about its PMS business without obtaining a requisite certificate under PMS Regulations, 1993.

10. Before I proceed to examine the aforementioned submissions of the *Noticee* so as to determine the issues framed above it would be appropriate to refer to the provisions of PMS Regulations and IA Regulations as alleged to have been violated by the *Noticee*. Accordingly, the said provisions are being reproduced hereunder for facility of ready reference:

The IA Regulations, 2013

Conditions of certificate

Regulation 13: 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

General responsibility.

15.(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

Code of Conduct for Investment Adviser

1. Honesty and fairness

An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.

8. Compliance

An investment adviser including its representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

...

The PMS Regulations, 1993

3. Registration as portfolio manager. —

No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations...

Issue 1: Whether the Noticee through its sole proprietor Mr. Shailendra Sen had provided false/misleading information to SEBI while applying and obtaining certificate of registration under IA Regulations for his proprietorship firm Capital Heed, stating that he was not engaged in investment advisory services prior to making the said application and whether he also failed to disclose that earlier as a partner of Cash Cow, he

was providing unregistered investment advisory service even after the certificate of registration for Capital Heed was granted to him.

11. I note from the *interim* order that the *Noticee* has falsely stated in 'Form-A' filed before SEBI (form prescribed for Application for Grant of Certificate of Registration as an IA) while seeking registration as an investment adviser, that he was not engaged in investment advisory services prior to making the said application and the said act of the *Noticee* is *prima facie* in violation of Clauses 1 and 8 of the Code of Conduct for investment adviser read with regulation 15(9) of the IA Regulations. Further, the *Noticee* also failed to disclose the fact of his earlier conduct of providing unregistered investment advisory service as a partner of Cash Cow even after the certificate of registration for *Capital Heed* was granted to him and such failure on the part of *Noticee* has also amounted to *prima facie* violation of regulation 13(b) of the IA Regulations. The aforesaid commission and omission on the part of the *Noticee* are also observed to be in violation of regulation 13(a) of the IA Regulations. It is also, *prima facie*, alleged that the *Noticee* has misrepresented to investors that it can provide PMS without even holding the certificate of registration as mandatorily required under PMS Regulations and as such, the *Noticee* has *prima facie* acted in violation of regulation 3 of the PMS Regulations.
12. The *interim* order states that during the year 2015, SEBI was in receipt of complaints through SCORES portal against an entity named Cash Cow wherein, it was alleged that the said entity has given the investors a commitment of assured returns. Based on the examination into the affairs of Cash Cow carried out by SEBI, it emerged that one of its partner viz., Mr. Shailendra Sen, based in Indore, is currently registered with SEBI as an investment adviser under the proprietorship named *Capital Heed* with effect from December 29, 2017. While examining the act and conduct of Cash Cow, including a scrutiny of the documents submitted by Mr. Shailendra Sen at the time of seeking registration with SEBI as an IA a perusal of 'Form A' (form for Application for Grant of Certificate of Registration as an IA) filed by the *Noticee* revealed the followings:
 - a. Mr. Shailendra Sen, in his application dated September 11, 2017, has declared that he was not engaged in investment advisory services prior to making the said application.
 - b. To the query as to whether he has ownership/directorship in any companies/partnership, he has not mentioned about his partnership in Cash Cow.
13. I note that at the time of seeking registration as an investment adviser from SEBI, in 'Form A', the applicant has to give a declaration on "*whether the applicant is engaged in investment advisory services prior to making application under these regulations*". It is noted from the 'Form A' submitted

by Mr. Shailendra Sen that he has declared that he was not engaged in investment advisory services prior to making the said application although Mr. Shailendra Sen, through the partnership firm Cash Cow, had already indulged in unregistered investment advisory activities prior to applying for registration as an IA with SEBI. As noted in the *interim* order, Mr. Shailendra Sen, while seeking registration from SEBI as an investment adviser in his capacity as the sole proprietor of the *Noticee* Firm was under the statutory obligation to disclose his prior activities as the partner in the partnership firm, Cash Cow to SEBI. However, for the reason best known to him, he has not made an honest and fair disclosure and rather seems to have concealed material information knowingly by falsely stating in the application form that he was not engaged in investment advisory services prior to filing his application for registration as an IA with SEBI. Thus the *Noticee* was successful in obtaining registration as an investment adviser on the basis of the said false declaration made by him to SEBI.

14. In this regard I note from the *interim* order that in response to SEBI's letter dated February 05, 2015, seeking information from Cash Cow regarding its unregistered investment advisory activities, Mr. Shailendra Sen vide letter dated March 23, 2016 has *inter alia* admitted that they had started advisory services in August 2014 and have now stopped offering such advisory services with immediate effect and also has stated that they shall offer such advisory services only once they get registered with SEBI. Further, I note that during the course of personal hearing held before me on October 14, 2020, the *Noticee* admitted that the investment advisory services were being provided to the investors through Cash Cow. I also note that the *Noticee* has acknowledged the fact that as soon as it was pointed out to them that the business of Cash Cow was being carried out without a mandatory IA registration it was realized by the *Noticee* that the said business did not constitute a lawful investment advisory service.
15. From a perusal of the *interim* order, it is noted that the *interim* order records certain allegations against the *Noticee* in a categorical manner on the basis of information extracted from the website of Cash Cow itself, as may be seen from the following extract;

“The following claims regarding Cash Cow were gathered from the entity’s website www.cashcowresearch.com, which is no longer active:

Cash Cow is a leading financial services company in area of broking and advisory industry in India.

Cash Cow is registered with exchanges, NSE, BSE, MCX, NCDEX, MCX-SX, for providing broking services.

Cash Cow offers Advisory Services, Broking Services, Portfolio Services and

Fund Management.

In advisory services, Cash Cow provides recommendation in all segments such as Stock cash, Stock future Tips, BTST Tips, Forex, etc. Various packages were being offered for subscription at specified rates and for specific products One such illustration is given below:

Stock Future Tips– This service is for the traders who trade in Stock Future. These Stock Future Tips are the after effect of center exploration and investigation...and help you to get a huge profit. Our call via SMS will reach you as soon as the analysts send so there is no time lag between you reading it and working on the call.

The fee ranges from Rs. 8,000/- per month to Rs. 48,000/- yearly.

The payment to subscribe to the services can be made directly to the bank accounts opened in the name of Cash Cow with ICICI Bank, Axis Bank and Central Bank of India. Alternatively, payments can be made through PayU Money. ”

16. In response to the allegation *inter alia* as noted above, it is observed that the *Noticee* has preferred to remain silent and not made any specific rebuttal by offering any cogent evidences to the contrary so as to refute the charge that Cash Cow was engaged in the activities of rendering unregistered investment advisory services. I note that the *Noticee* has either baldly denied the allegation merely by explaining that Cash Cow was not in existence and operational at the time when the *Noticee* made his/its application seeking registration from SEBI. As per the claim of the *Noticee*, the partnership of Cash Cow stood dissolved by the time the *Noticee* had applied for registration as an investment advisor. The *Noticee* has however not denied the fact the he was one of the partners of Cash Cow. However, in response to the allegation against him for making a false declaration in the Form A that he was not engaged in investment advisory services in any manner prior to seeking registration, the *Noticee* has submitted that Cash Cow had started its advisory services in August 2014 and became a defunct entity sometime in February 2017 and subsequently got dissolved by a deed of dissolution of the said partnership deed dated March 29, 2017. The *Noticee* has sought to justify his declaration made in Form A by stating that since the activities of Cash Cow was closed and he was engaged in construction work at the time of filing his application with SEBI seeking registration, the declaration so made by him in Form A cannot be viewed as false. During his personal hearing before me which was held on October 14, 2020, the *Noticee* himself did not deny that

investment advisory services were being provided through Cash Cow and rather reiterated his submission with a request to view the omission in the declaration so given by him in Form A of his application as a solitary unintentional error made on his part for which his registration should not be invalidated.

17. After perusal of the details/documents available on record and consideration of the submissions made by the *Noticee*, it is found that there is no denial to the fact that the *Noticee* was connected with Cash Cow which did not possess a SEBI registration to act as an IA. There is also no categorical denial of the fact that Cash Cow was rendering investment advisory services. On the contrary, it has been acknowledged that advisory services by Cash Cow commenced in August 2014, and they were engaged in offering products, such as, Stock Cash Tips, Stock Future Tips, Nifty Future Tips, Option Strategies, Commodity Tips, Forex Tips, HNI Premium Tips, etc. and for these various products, they had 22 clients and had generated fees of INR 1,90,800/- by rendering such advisory services. In view of the same, I see no merit in the submissions of the *Noticee* that merely for the reason that the said partnership was not in operation and stood dissolved at the time of making application by the *Noticee*, the *Noticee* was not required to make the disclosure about his/its past investment advisory activities as mandated under 'Form A'. Perusal of the 'Form A' suggests that it requires a person seeking registration to make disclosure about his/her antecedent or past association with the securities market. It would be highly improbable and impractical to conceive and accept the submission that the said disclosure was meant only for present engagement or association in the relevant filed and the *Noticee* was not expected to divulge the details of his past activities in rendering investment advisory services that too as an unauthorized advisor without obtaining any registration from SEBI.
18. One of the submissions of the *Noticee* is that as Cash Cow was registered and acting as an AP of Angel Broking Pvt. Ltd. it fell into the exempted category and did not require to be registered as investment advisor. The said submission is however fraught with contradiction. The *Noticee* having submitted that Cash Cow was acting as AP of Angel Broking Pvt. Ltd., has accepted his association with the securities market as an AP prior to filling the application for certificate of registration as an investment adviser and therefore, was expected to have very well understood the nuisances of making appropriate declaration required to be made by a prospective Intermediary while seeking registration from SEBI to operate as an Intermediary in the securities market. As regards his association as AP with securities market, it must be appreciated that the regulatory provisions would exempt it from obtaining a fresh registration only for such activities which are integrally associated or incidental to the primary work of

discharging the role of an AP and not otherwise. Thus the regulations cannot be read to mean and understand that the persons mentioned under regulation 4 of the IA Regulations are permitted to carry on the activities of investment advisor independently, for which no registration would be required. It is reiterated that the acts of performing as AP by no stretch of imagination would permit any AP to indulge in activities of unauthorized investment advisory activities as mentioned in the *interim* order. The *Noticee* while not denying the allegations of Cash Cow being engaged in unregistered investment advisory activities has furnished no explanation or justification for its act of not stating the truth about his prior investment advisory activities while applying for registration as an IA with SEBI.

19. The submissions of the *Noticee* that the alleged false declaration in Form A was not intentional and was a solitary error, also do not inspire confidence so as to give a clean chit to the *Noticee* from the charges made in the *interim* order. It is a trite law that when provisions of law prescribe certain acts to be done in a particular manner/format, the same is required to be honoured in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. Therefore, if a specific declaration is mandated to be given by an applicant aspiring to be a market Intermediary, then the answer to that specific declaration has to be specific and in unambiguous terms. I am of the considered view that the intention on the part of the *Noticee* is immaterial. In the context of securities market, I note that role of a registered Intermediary is of utmost importance as the Intermediaries are required to deal with investors and their financial affairs hence, the job of a registered Intermediary including a registered IA is not only sensitive and predominantly fiduciary in nature but also demands honesty, transparency, fairness and integrity to be the hallmarks of such market Intermediaries. Given the fact that one of the avowed objects of the SEBI Act is the protection of interest of investors apart from promotion and development of the securities market, the legislature through enactment empowers SEBI to grant registration to several class of entities including investment adviser, which are not only required to act as an intermediary simplicitor i.e., a bridge or a connector between regulator and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors and any deviation from the above noted objective could have a cascading adverse impact on the development of the securities market. Thus, undisputedly an investment adviser is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the securities market.

20. The *Noticee* has taken a plea that he was never in active management and was not in know of the actual affairs of his partnership firm, Cash Cow. I find the *Noticee* by not being successful in refuting the allegation made against him/it, is now making a feeble attempt to escape the likely regularity and/or enforcement action for the aforesaid false declaration made by him in 'Form A' at the time seeking registration. In this regard it is worth noting that as per Section 25 of Indian Partnership Act, 1932 every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. I note from the *interim* order that Mr. Shailendra Sen had a 55% share in the profits/loss generated by the partnership and was to receive 55% of the remuneration that was distributed between the three partners. Therefore, in the absence of any document to further buttress his argument that indeed he was acting as a dormant / sleeping partner and had no role in day-to-day management of Cash Cow, I find that on the basis of the material available on record before me and based on the submission of the *Noticee*, there is no dispute that the *Noticee* was indeed a partner in Cash Cow and was equally liable for acts, deeds misdeed of the partnership firm. In this respect, I further reiterate that the scope of the instant proceeding is limited to examine the declaration made by him in 'Form A' while seeking registration as an investment adviser and in my view, the above said argument advanced by the *Noticee* will not be successful in discharging the allegation. I may also hasten to add here that it is the claim of the *Noticee* that it was only he, who had responded to the SEBI's inquiry against Cash Cow. Thus, by his said conduct and admission, the *Noticee* has made it clear that he was not a merely dormant partner as claimed by him and rather was for all practical purposes in command of the affairs of the said partnership firm due to which he has been able to cooperate with the inquiry conducted by SEBI into the affairs of Cash Cow. The *Noticee* therefore cannot now plead *alibi* from the day to day functioning of the said partnership firm.
21. To put the aforesaid deliberation in perspective, it is noted that in terms of regulation 13 of the IA Regulations the investment adviser shall abide by the provisions of the SEBI Act and these regulations framed thereunder and shall forthwith inform SEBI in writing, if any information or particulars submitted previously are found to be false or misleading in any manner or if there is any material change in the information already submitted earlier by him. Further, regulation 15(9) of IA Regulations casts an obligation on an investment adviser to abide by the Code of Conduct as specified in Third Schedule. Similarly, Clause 1 of the said Code of Conduct mandates that an investment adviser shall act honestly, fairly and in the best interests of its clients and in the interest of integrity of the market while the Clause 8 cast an obligation on an investment adviser including its representative(s) to comply with all regulatory

requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

22. The scope of the instant proceeding is not to analyze the actual impact and consequences of such concealment but to examine as to whether the *Noticee* has made a true and correct declaration in 'Form A' while seeking registration and the answer to the said question is manifestly and unquestionably against the *Noticee*. In the above background, I find that the *Noticee* was very much seized with the nature of activities with which Cash Cow was involved in and despite having knowledge about the business activities of Cash Cow in which he was having a 55% share, including its investment advisory activities, not only the *Noticee* has concealed the said fact from the knowledge of SEBI but also has consciously made a false declaration in the 'Form A' at the time of seeking registration. The above conduct of the *Noticee*, where on the one hand he tries to feign ignorance about the fact that he was required to make the afore-said disclosure, on the other hand he claims emphatically that by the time the application was made, the partnership firm, Cash Cow was no more operational, hence he did not have to disclose his prior investment advisory activities in Form A. Such type of approach on the part of the *Noticee* shows his casual approach towards his statutory responsibility as an IA in complete disregard for regulatory mandate of SEBI. The *Noticee*, by his endeavor to justify his false declaration made in Form A on the ground that he was not actively involved in the affairs of the said partnership firm Cash Cow and therefore was not required to disclose his association with it, has rather exhibited his gross inability to act in a fair and honest manner, more particularly, when the above act of false declaration is examined under the lens of his admittedly long association with the securities market as an AP under the partnership firm of Cash Cow. I also find that the *Noticee* has failed in explaining with any credible evidences the reason and circumstances that led him to make such a false declaration in 'Form A'.
23. I also find that the attempt of the *Noticee*, to contend that at the time of document submission, he was not "specifically" asked if he was ever involved in investment advisory service, is just an afterthought exercise to evade the outcome of the proceedings. In this regard, as observed above the real purport of the declaration in 'Form A' was to find out if the applicant had any previous association with the securities market and not merely at the time of applying for certificate of registration to act as investment adviser. In view of this also I am not inclined to agree with the contention of the *Noticee* that the only issue that needs to be looked into is whether Cash Cow was in existence when the said IA application 'Form A' was filed by him and whether he was under an obligation to disclose that he was a partner in Cash Cow in the

said form. Further, I also find no merit in the contentions of the *Noticee*, that he has not knowingly provided any false statement or documents while obtaining the IA registration and the same cannot be termed to be an inadvertent mis-statement and *bona-fide* error committed in one caption of the 'Form A'. In my view it was a deliberate attempt to hide such information in order to procure the certificate under the IA Regulations without any hassle and in the entire process the *Noticee* did not approach SEBI with clean hands apparently out of his fear that by declaring his prior investment advisory activities rendered by him through his partnership firm without obtaining a registration of IA from SEBI, it may adversely affect his prospect for getting a certificate of registration from SEBI. Moreover, the *Noticee* has not advanced any credible submission to refute the charge that if Cash Cow was not really into any kind of investment advisory activities, why disclosure like "*Cash Cow is registered with exchanges*" "*Cash Cow offers Advisory Services, Broking Services, Portfolio Services and Fund Management*" etc. were made on its website to entice prospective investors.

24. In view of the aforesaid discussions and observations, I find that the first issue is answered in affirmation. I further find that the *Noticee* has failed to bring sufficient evidences and justifications to convince me as to why despite having association with the securities market in one way or other, he decided to answer to the required declaration in 'Form A' in the negative, which specifically asked in categorical terms as to whether he was engaged in investment advisory services prior to making the said application for registration as an IA. The *Noticee* has also failed to explain under what circumstances the partnership firm decided to display on its website the details of various kinds of services it rendered including investment advisory services as reproduced under paragraph 15 above when the firm Cash Cow did not have any SEBI registration to provide such investment advisory services. In the absence of any rebuttal to the charges made in the *interim* order with any concrete reasons, the only inescapable conclusion that I can arrive at is that the *Noticee* has knowingly made a false declaration in 'Form A' (form for Application for grant of Certificate of Registration as an IA) filed before SEBI while seeking registration as IA from SEBI, and thereby has violated Clauses 1 and 8 of the Code of Conduct for investment adviser read with regulation 15(9) and 13(b) of the IA Regulations.

Issue 2: Whether Capital Heed was further, engaged in activities related to PMS by advertising on its website about its PMS business without obtaining a requisite certificate under PMS Regulations, 1993

25. Moving on to the second issue i.e., whether *Capital Heed* was further engaged in activities related to PMS by advertising on its website about its PMS activities without obtaining a certificate under PMS Regulations, 1993, I note that the *interim* order records that during

examination, it was observed from the website of *Capital Heed* that the entity is claiming to offer PMS. The *Noticee* has also claimed that it has over a decade long experience in providing PMS. It is pertinent to note here that the *Noticee* is registered with SEBI only in the capacity of an investment adviser.

26. I note that the conduct of the *Noticee* in misrepresenting to the investors that it can provide PMS although it does not hold the certificate of registration from SEBI under PMS Regulations to do so, cannot be seen in isolation. I have already found in the preceding paragraphs that the *Noticee* has obtained certificate of registration to act as investment adviser under IA Regulations on December 29, 2017 that again, by submitting false/misleading/wrong information in 'Form A' to SEBI. Further, I note that the *Noticee* claimed in its website to have over a decade long experience in providing PMS even though the aforesaid certificate to act as investment adviser was obtained on December 29, 2017 only which makes such claim of the *Noticee* patently false on the face of it.
27. The *Noticee* has submitted that *Capital Heed* has not been involved in any transactions pertaining to PMS and the marketing of PMS was done inadvertently on the website of *Capital Heed* for the purpose of attracting more clients for investment advisory services however, no such services pertaining to PMS were ever provided to any client. Having gone through the records, I find the above submission of the *Noticee* is fallacious and without any merit. There is no doubt that no person can engage in the activities of PMS without obtaining the necessary registration from SEBI. The mandate and requirement of law is not about whether a person has provided any actual services of a PMS, but about whether a person has the eligibility under law to engage in an activity of a PMS without obtaining the requisite certificate of registration since engagement in such activities without possessing the necessary registration is explicitly prohibited under the SEBI Act and the relevant regulations framed thereunder. Undisputedly, the *Noticee* has made advertisement to the public at large claiming that it provides PMS for which he had no permission and authority as no certificate of registration was granted to him. His admission that the advertisement was meant to lure investors to seek his investment advisory services further, is not only a frivolous explanation to defend a glaringly unauthorized act but also raises serious aspersion on his conduct. Considering the questionable conduct of the *Noticee* where he has already been held to have submitted false/misleading/wrong information to SEBI while obtaining certificate of registration to act as investment adviser, its further attempt to induce investors to avail its PMS services by falsely declaring on its website that it possessed a decade long experience in PMS knowing fully well that it did not have even a registration to offer PMS services, the submission made by the *Noticee* that by making an

advertisement about PMS it wanted to lure investors to avail its investment advisory services is just an afterthought and a desperate attempt to seek a discharge from the said allegation. The *Noticee* knowing fully well that no such certificate under PMS Regulations was obtained by him and that he cannot provide PMS on the basis of the certificate obtained to act as an investment adviser, which was obtained by him only on December 29, 2017, has intentionally indulged in a fraudulent act by alluring the gullible investors through his misleading advertisement and claim.

28. The object and scope of the present proceedings is limited to examine the allegation in the light of facts mentioned in the *interim* order. It is the duty of the *Noticee* to come forward with cogent reason and supporting document to dispel the charge. In this regard, the *Noticee* has failed to bring any document substantiating his claim and instead of furnishing materials or documents in support of the claim so advanced, I find the *Noticee* is endeavoring to extend the scope of the proceeding to issues not relevant and material for the instant proceeding by claiming that he has not provided any PMS services to any clients which can be verified from his clients or market. Notwithstanding the aforesaid, it is an established fact now that an offer of PMS was made on the website and fructification of such offer in reality may not be ascertainable, nor such an activity is required to be verified to adjudge the charges against the *Noticee* so long as it remains unassailed that the *Noticee* had offered PMS services to the prospective investors through an advertisement on its website. Therefore, in the absence of any justification or supporting material/documents provided by the *Noticee* to the contrary, I am constrained to hold that the *Noticee* has misrepresented to the investors that it can provide PMS although he did not hold the necessary certificate of registration from SEBI to provide such service and as such, the *Noticee* is in violation of regulation 3 of the PMS Regulations. Thus, I find that the second issue i.e., whether *Capital Heed* was further, engaged in activities related to PMS by advertising on its website without obtaining a certificate under PMS Regulations, 1993 is also answered in affirmative.
29. Before summarizing my observations and discussions in the foregoing paragraphs, I must note here that an entity which is granted registration as an investment adviser is required to act in a manner and comply with all applicable regulatory requirements which are in the best interests of its clients and uphold the integrity of the securities market. As the arena of investment advisory is fundamentally vast and complex, the IA Regulations have prescribed broad checks and balances so as to keep the interest of the investors protected from any kind of untoward treatment in the hands of unscrupulous investment advisers. The Code of Conduct spells out the general duties of the investment adviser to act honestly and fairly so as to serve the best

interest of the clients in a fiduciary manner and to keep intact the integrity of securities market. I note that adherence to the Code of Conduct is an ongoing requirement and the conduct of the *Noticee* by deliberately providing false information to SEBI at the time of seeking registration is certainly not in the interest of investors and the securities market and is a serious violation of Clauses 1 and 8 of the Code of Conduct. Further, the *Noticee* has failed to comply with regulation 13 (b) because of the fact of his conduct, as his partnership in a firm providing unregistered investment advisory service was not informed by the *Noticee*, even after the certificate of registration for *Capital Heed* was granted to him. By virtue of these violations, the *Noticee* has also violated regulation 13 (a) of the IA Regulations as well. As such, I find that the *Noticee* has not acted in a manner which is in the best interests of the clients and integrity of the securities market.

30. I observe that considering the facts of the matter, necessary action was needed to be taken in this matter to prevent entities like the *Noticee* from causing any further damage by acting contrary to the interest of investors of securities market. Allowing an investment adviser, who had obtained a certificate of registration on the basis of false/misleading/wrong information, to register new clients would not have been in the best interest of new investors and the orderly development of the securities market. Moreover, the instant proceeding is not being conducted either in the exercise of any appellate or power of revision of order but in continuation of the *interim* order (which has not even been challenged by the *Noticee*) during which the allegations against the *Noticee* shall be taken into logical conclusion after taking into consideration all the explanations offered and arguments advanced by the *Noticee* with supporting evidences, furnished if any, hence the contention of the *Noticee* that an unintentional *bona-fide* error in one caption of the 'Form A' does not warrant an exercise of SEBI powers to pass *interim* order is liable to be rejected being baseless and devoid of merit.
31. To sum up, I find that Mr. Shailendra Sen, when seeking registration from SEBI as an investment adviser in his individual capacity, was under a statutory obligation to disclose his prior activities in relation to the securities market including the unauthorized investor advisory activities undertaken by his partnership firm in true and correct sense to SEBI. However, it is now clear that he has knowingly made a false declaration in his application form for registration as investment adviser stating that he was not engaged in investment advisory services prior to filing his application thereby has intentionally furnished a false/misleading/wrong information to SEBI in violation of Clauses 1 and 8 of the Code of Conduct for investment adviser read with regulation 15(9) of the IA Regulations. Moreover, the *Noticee* has also failed to disclose the fact of his earlier engagement in the activities of Cash Cow in the capacity of a partner of

the said firm, even after the certificate of registration for *Capital Heed* was granted to him and such failure on the part of the *Noticee* to disclose such information which was not disclosed at the time of obtaining the registration has led to violation of regulation 13(b) of the IA Regulations. The aforesaid misconduct on the part of the *Noticee* has also amounted to violation of regulation 13(a) of the IA Regulations. At the same time, the *Noticee* has misrepresented to investors that it can provide PMS although it did not hold a certificate of registration from SEBI to do so, thereby violating regulation 3 of PMS Regulations, 1993.

32. In view of the foregoing discussions and my observations thereon upholding the said allegations of misconduct and violations of general conditions of certificates on the part of the *Noticee* as established on facts & circumstances of the case, in order to achieve the avowed object of SEBI Act, 1992, and to protect the interest of investors, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 35, Chapter VI of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 hereby pass the following directions against the *Noticee*, Mr. Shailendra Sen, proprietor of Capital Heed Financial Research (SEBI Registration Number: INA000009418 and PAN: BUXPS9559Q):

- i. The *Noticee* is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of **three (03) years** from the date of this order. It is clarified that while calculating the period of debarment as directed above, the period of restraint already undergone on account of *interim* order shall be adjusted.
- ii. The *Noticee* is directed to resolve the complaints, if any, pending against him in the SCORES and otherwise, within the period of 30 days from the date of this order.
- iii. The *Noticee* shall within a period of 03 months from the date of this order, furnish a report to SEBI, duly certified by a Chartered Accountant, certifying that all the complaints against the *Noticee* have been resolved.
- iv. In case of failure of the *Noticee* to comply with the aforesaid directions, the *Noticee* shall be restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for an additional period of two (02) years or for such time all the complaints are resolved, whichever is later.

33. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the Noticee shall remain frozen.
34. Obligation of the Noticee, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the Noticee in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
35. This order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entity in accordance with law.
36. This Order shall come into force with immediate effect.
37. A copy of this Order shall be served upon the *Noticee*, all the recognized Stock Exchanges, depositories and registrar and transfer agents for necessary compliance with the above directions.

DATE: JUNE 01, 2021

PLACE: Mumbai

Sd/-

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA