

WTM/AB/WRO/WRO/12281/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), 114A, 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Noticee No.	Name of the entity	PAN No.
1.	M/s. Shri Research Services (Proprietor: Mr. Gourav Kumar Gour)	AYBPG7677C

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1. The present proceedings have emanated from a show cause notice dated January 20, 2021 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to M/s. Shri Research Services, and its sole proprietor i.e. Mr. Gourav Kumar Gour, (hereinafter collectively referred to as “**the Noticees**”), alleging that the Noticees have carried out investment advisory activities without obtaining a certificate of registration from SEBI, in *prima facie* violation of provisions of Sections 12(1) and 12A (a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), Regulation 3 (a), (b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”), and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”).
 2. The allegations made in the SCN are as under:
 - a. SEBI had received a complaint dated February 02, 2018 against M/s. Shri

Research Services, wherein it was *inter alia* alleged that the complainant had received call from the Noticees for taking investment advisory services and he thereafter, deposited Rs. 12,000/- for investment advisory services but had not got any service. Based on the same, an examination of the complaint was carried out by SEBI.

- b. From the KYC and confirmation obtained from Axis Bank Ltd., it was observed that Mr. Gourav Kumar Gour was the sole Proprietor of SRS
 - c. From the analysis of the bank account statement of Axis Bank Account- 916020044292311 of the Noticees, it is noted that credit of Rs. 14,63,061 have been received for the period January 01, 2018 – July 12, 2018.
 - d. From the analysis of said bank statements, it is revealed that the Noticees had collected fees directly from clients in its bank account. The fees of Rs. 12,000 which the complainant had alleged to have paid, is noticed in the Axis bank statement on January 22, 2018.
 - e. Further, Mr. Gourav Kumar Gour in his letter dated April 10, 2018 had accepted providing tips in stock markets to its clients, which he has since stopped. He had further stated that he was using the name of 'Alpha Investment Research' to provide tips to clients and was giving 30% to the said entity. Mr. Gourav Kumar Gour also submitted letters dated April 06, 2018 from its 5 employees namely- Anil Nimbola, Sangeeta Gargo, Rahul Parmar, Sapna Bhargav and Prahlad Chauhan, in which they had stated that, '*We are employees of SRS, which had taken franchisee of Alpha Investment Research and was providing services in share market*'.
3. The SCN also called upon the Noticees to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B(1) of the SEBI Act, 1992 should not be issued against them for alleged violations. The Noticees were further called upon to show cause as to why inquiry should not be held against them in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Rules**") and penalty be not imposed under Section 11 (4A), 11 B(2)

for violation of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013 and Section 12A(a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003.

4. The SCN also provided to the Noticees an opportunity to file their objections/reply, if any, within 21 days from the receipt of the notice. I note that the SCN could not be delivered at the last known address available with SEBI, even though letters issued during examination was delivered to the Noticees at the same address to which they had responded vide letter dated April 10, 2018 to SEBI. Accordingly, the SCN was served through newspaper publication on March 15, 2021 in the Times of India, Indore (English Edition) and Dainik Bhaskar, Indore (Hindi Edition), having circulation in the locality of last known addresses of the Noticees. Vide the same newspaper publication on March 15, 2021, opportunity of personal hearing was also granted to the Noticees on April 27, 2021. However, on April 27, 2021, the Noticees did not appear for the hearing and neither did they file any letter seeking adjournment. I also note that the Noticees did not file any reply/objections to the SCN. Hence, I shall now proceed to examine the matter on the basis of the material available on record.
5. I note that the definition of investment adviser, as given in Regulation 2(1)(m) of IA Regulations, 2013, provides that investment adviser means *“any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called”*. Regulation 2(1) (l) of the IA Regulations defines investment advice as *“advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.”*
6. I note that during examination of the complaint received in the matter by SEBI, Mr. Gourav Gour in his letter dated April 10, 2018 to SEBI, had accepted providing tips in stock markets to its clients, which he claimed he had since stopped. In the said letter, Shri Gourav Gour also admitted that he owned Shri Research Services which is franchisee of Alpha Investment. Mr. Gourav Gour, in his another letter of the same

date i.e. April 10, 2018, had *inter alia* submitted that he has closed down Shri Research Services through which it used to give investment advice to investors, by using the name of Alpha Investment Research with which he had a goodwill use arrangement for which he used to pay 30% of the fees/commission charged from investors to Alpha Investment Research. He had further stated that he was using the name of 'Alpha Investment Research' to provide tips to clients and was giving 30% to the said entity. Further, I note that he had submitted letter dated April 06, 2018 from its 5 employees namely- Anil Nimbola, Sangeeta Gargo, Rahul Parmar, Sapna Bhargav and Prahlad Chauhan, in which they had stated that, '*We are employees of SRS, which had taken franchisee of Alpha Investment Research and was providing services in share market*'. I also note that complaint was filed with SEBI by one Mr. Vinod Pareek alleging that he had received call from Shri Research Services for taking investment advisory services and he thereafter, deposited Rs. 12,000/- for investment advisory services but had not got any service. I note that Mr. Gourav Gour has also submitted statements of bank account of Shri Research Services held with Axis Bank having number 916020044292311. KYC documents of said bank account, as received from Axis Bank, also shows that Shri Research Services is the sole proprietary concern of Shri Gourav Gour.

7. From the details of the said bank account, it is further noted that credits of Rs. 14,63,061/- have been received for the period January 01, 2018 – July 12, 2018. The bank account statement of said account also shows credit of amount of Rs. 12,000/- of the complainant. From the aforesaid facts, I find that the Noticees were engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, in lieu of consideration. In terms of Regulation 2(1) (l) of IA Regulations, 2013 such an advice is "investment advice". Therefore, I find that Noticees were engaged in the business of providing investment advice to public, for consideration and were thus, acting as an investment adviser, as defined under Regulation 2(1) (m) of the IA Regulations, 2013.
8. Section 12(1) of the SEBI Act, 1992 provides as under:

"No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment

adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.”

9. In order to protect the interest of investors and to maintain integrity of the securities market, IA Regulations, 2013 provides safeguards to ensure that the investors who receive investment advice are protected. One such safeguard is that any person carrying out investment advisory activities has to obtain registration from SEBI as required under Regulation 3(1) of the IA Regulations, 2013. Regulation 3(1) provides that, *“On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations”* and conduct its activities in accordance with the provisions of IA Regulations. Further, safeguards provided under IA Regulations, 2013 includes continued minimum professional qualification and net-worth requirement for investment adviser, disclosure of all conflict of interest, prohibition on entering into transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client based on client’s objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc.
10. The activities of the Noticees, as admitted by Mr. Gourav Gour and as can be made out from the material available on record, seen in the backdrop of the aforesaid provisions of SEBI Act, 1992 and IA Regulations, 2013, show that the Noticees were acting as an investment adviser. However, it is noted that Shri Research Services is not registered with SEBI in the capacity of Investment Advisor. Hence, I find that these activities carried on by the Noticees without holding a certificate of registration as investment adviser are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.
11. SCN also alleges that Noticees have violated Section 12A (a), (b), (c) of SEBI Act, 1992 and Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003. In this regard, I note that Noticee have been found to be engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment

products, in lieu of consideration and in this context one complaint from one Shri Mr. Vinod Pareek, alleging payment of Rs. 12,000/- to Shri Research Services has also been referred. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 deals with fraud related to securities market and the provisions of Regulations 3(b), (c) & (d), of PFUTP Regulations, 2003 are also related to securities market fraud/manipulation/unfair trade practices. Section 12A (a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase, sale or dealing, of any securities. It is noted that after February 01, 2019, acts which may be knowingly designed to influence the decision of investors in securities, have been made as part of dealing in securities as defined under Regulation 2(1)(b) of PFUTP Regulations, 2003. In case of Investment Advice the Investment Adviser has to give advice after risk profiling and taking into consideration the suitability of the product. However, the investor may or may not accept the advice and has the full option to go by the advice of the Investment Adviser or not. I note that in his letter dated April 10, 2018 Mr. Gourav Gour has submitted that Noticees have stopped giving investment advice. I note that the material available on record does not suggest anything to the contrary. Therefore, violations of Section 12A (a), (b) & (c) Regulations 3(b), (c) & (d), of PFUTP Regulations, 2003 may not be attracted in the present case. I note that there is no allegation in the SCN that the Noticees were having any website for providing any investment advisory service. I note that in terms of Regulation 4(2) of PFUTP Regulations, 2003, as existing at the relevant time, dealing in securities shall be deemed to be fraudulent or an unfair trade practice if it involves fraud and may include an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors. In the present case, material available on record does not point out that Noticees had issued any advertisement regarding their investment advisory services. It is noted that in one of the letter dated April 06, 2018 by SEBI to the Noticees, it has been mentioned that Noticees were operating a website i.e. www.shriresearchservices.com, however, further proof of operating such website like printouts of the webpages showing the content of the website such as showing rendering of investment advisory services by Shri Research Services, or holding

himself as registered Investment Adviser, payment options for availing such advice like bank account/payment gateways, etc. where advisory fees could be paid for availing services, are not available on record. The complaint received from one Mr. Vinod Pareek in the matter though mentions that the complainant had paid Rs. 12,000/- to Shri Research Services, however, it does not mention the name of any website. Therefore, even the provisions of Regulation 4(2) (k) of PFUTP Regulations, 2003 may not be attracted in the present case.

12. I note that the material available on record does not indicate the exact amount of fees collected by the Noticees, as a result of providing investment advice to investors, in violation of the provisions of the IA Regulations, 2013. However, I note that the complainant Mr. Vinod Pareek has claimed that he had paid an amount of Rs. 12,000/- to the Noticees, for availing investment advisory services from the Noticees.
13. I note that the SCN also calls upon the Noticees to show cause as to why inquiry should not be held against them in terms of Rule 4 of the Rules and penalty be not imposed under Section 11 (4A) and 11 B(2) for violation of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013 and Section 12A(a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003. In this regard, I find that Section 15HA and 15HB of the SEBI Act, 1992 which provides as under:

“Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”*

14. I note that Noticees are in violation of provisions of SEBI Act, 1992 and IA Regulations, 2013, as discussed in para 10 above, therefore, Noticees are liable for penalty under Section 15HB of SEBI Act, 1992. In view of the findings recorded in para 11 above, penalty under Section 15HA of the SEBI Act, 1992, is not attracted in the present case.
15. I note that while imposing penalty under Section 15HB of the SEBI Act, 1992 the factors enumerated in Section 15J are to be taken into consideration. Section 15J of the SEBI Act, 1992 provides as under:

“Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

Explanation.— For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

16. I find that the material available on record does not indicate the amount of disproportionate gain or unfair advantage made by the Noticees as it cannot be confirmed whether the credits of Rs. 14,63,061/- in the Axis Bank Account- 916020044292311 of the Noticees for the period January 01, 2018 – July 12, 2018 have been received only from investors for unregistered investment advisory services. I note that the Noticees are being directed refund the money received from the clients/investors/complainant, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities. Further, the material available on record does not indicate the total amount of loss caused to specific investors or group of investors, as a result of the default by the Noticees. However, I

note that the complainant, Mr. Vinod Pareek has claimed that he had paid an amount of 12,000/- to the Noticees for availing investment advisory services. With regard to whether the default by the Noticees is repetitive in nature, I note that the Noticees were acting as investment adviser without obtaining a certificate of registration as investment adviser.

17. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections, 11(1), 11(4), 11(4A), 11B(1), 11B(2) and 15-I of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and Rule 5 of the Rules, hereby direct that:

- (i) The Noticees shall within a period of three months from the date of coming into force of this direction, refund the money received from the clients/investors/complainant, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;
- (ii) The Noticees shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;
- (iii) The repayments to the clients/investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- (iv) The Noticees are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above.
- (v) Axis Bank wherein Shri Research Services is holding account, is directed not to allow any debits/ withdrawals from and credits to the aforesaid account, except for debits for the purposes of the refunds as directed in para 17(i) above. Axis Bank is directed to ensure that all the above directions are strictly enforced.

- (vi) The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of Shri Research Services and its proprietor, Mr. Gourav Kumar Gour, held jointly or severally.
- (vii) After completing the aforesaid repayments, the Noticees shall file a report of such completion with SEBI addressed to the Division Chief, CIS Division, Investment Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 15 days, after completion of three months from the coming into force of direction given in para 17(i) above, duly certified by an independent Chartered Accountant. The restraint contained in para 17(iv) shall cease to operate once the refund to the investors is complete and the report as contemplated herein is filed;
- (viii) In case of failure of the Noticees to comply with the aforesaid directions in sub-paragraphs (i) and (v) above, SEBI, on the expiry of the stipulated time period therein may recover the amounts mentioned in para 12 above or any other amount, as may be found to have been raised by the Noticees, from the Noticees, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;
- (ix) The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 2 (two) years from the date of this order or till the expiry of 2 (two) years from the date of completion of refunds to investors as directed in paragraph 17(i) above, whichever is later;
- (x) The Noticees are also restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in any capacity for a period of 2 (two) years from the date of this order or till the expiry of 2 (two) years from the date of completion of refunds to investors as directed in paragraph 17(i) above, whichever is later; and

- (xi) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 17(ix) and (x) above, 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.
- (xii) The Noticees are hereby imposed with, under Section 15HB of SEBI Act, 1992, a penalty of Rs. 5 lakh, and are directed to pay the penalty within a period of forty-five (45) days, from the date of receipt of this order;
- (xiii) The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IMD-CIS, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

18. The direction for refund, as given in paragraph 17(i) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other

law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

19. This order comes into force with immediate effect. However, in view of the exceptional circumstances emerged due to the outbreak of a COVID-19 and consequential lockdowns imposed in different parts of the country, the direction given in paragraph 17 (i) and (ii) above, shall come into force on July 01, 2021.
20. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant bank, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/-

Place: Mumbai

Date: June 16, 2021

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA