

WTM/AB/SRO/BLO/18/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

UNDER SECTIONS 11, 11(4), 11B (1) and 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee No.	Name of the entity	PAN No.
1.	Profitsaim (Proprietor Mr. Syed Ayaz)	FHCPS5667F

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1. The present proceedings have emanated from an ex-parte ad-interim order cum show cause notice dated November 12, 2020 (hereinafter referred to as “**the interim order**”) passed by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against Profitsaim and its sole proprietor Syed Ayaz (hereinafter collectively referred to as “**the Noticees**”), as the unregistered investment advisory activities of the Noticees were found to be in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”). By the interim order, following directions were issued against the Noticees:

“27. In view of the above, pending conclusion of enquiry, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11, 11(4), 11B(1) and 11D read with Section 19 of the SEBI Act, 1992, hereby issue by way of this *interim ex-parte order*, the following directions:

27.1 Profitsaim and its Proprietor Mr. Syed Ayaz (PAN: FHCPS5667F) are directed to:

27.1.1 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 matter whatsoever, until further orders.

- 27.1.2 Not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.*
- 27.1.3 Not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.*
- 27.1.4 Immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., physical or digital in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.*
- 27.1.5 Not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.*
- 27.1.6 To provide a full inventory of all assets held in their name, 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.”*

2. Interim order also gave liberty to the Noticees to contest the findings in the interim order if they so desire and file the objections and/or request for personal hearing, if any, receivable by SEBI within 21 (twenty-one) days from the date of serving of the interim order on them. The interim order was also in the nature of a show cause notice whereby the Noticees were called upon to show cause as to why the investment advisory plans floated by them should not be held as “Investment Advisory Services” in terms of the IA Regulations, 2013 and thereby the activities of the Noticees be treated as unregistered investment advisory activities and why appropriate directions, under Sections 11, 11(4), 11B(1) and 11D of the SEBI Act, 1992 and relevant SEBI Rules/Regulations, including directions to prohibit them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period, directions not to be associated with any registered intermediary/ listed entity in the securities market, in any manner whatsoever, and direction to refund the amount collected from the investors/ clients for its various schemes, should not be issued against them under Sections 11 and 11B (1) of SEBI Act, 1992. The interim order was delivered to M/s. Profitsaim and Mr. Syed Ayaz on November 17, 2020. Vide their reply which was received by SEBI on December 1, 2020, the Noticees have raised the following contentions to the interim order:

- i. That the complainant Mr. Nitesh Jain (Prop. ProfitAim Research) and his

website name and style is “profitmresearch.com”, but my firm name is profitsaim and the website is “profitsaim.com”, so my firm is not related with the complainant’s company/ firm so the complaint logged against my firm is otherwise bad-in-law and fact as well.

- ii. The fact is that my firm name and style is “Profitsaim” registered under Ministry of Micro, Small and Medium Enterprises on December 4, 2019, but your honour’s observation in para 5(c), in the year of 2013. I started my business from December 2019, when I also received the notice from the SEBI Bangalore Local Office on June 1, 2020. I stopped my business running from third party company gateway received a sum of Rs. 13,57,949/-, so the claim which is reflected in the order is false and fabricated. My firm runs business only six months, after six months when SEBI Bangalore Local Office issued a notice to me, I closed my business.
 - iii. I am not aware about the settled principle of law regarding SEBI for the purpose of running stock advisory. Now, I am interested to register my firm with SEBI.
 - iv. That I want to continue the business if you will allow me and I will apply for SEBI registration and further undertake to abide by the rules and regulations framed by SEBI.
3. An opportunity of hearing was provided to the Noticees on May 28, 2021 when Mr. Syed Ayaz appeared and made his submissions on the lines of his aforesaid reply.
4. I find that the interim order passed in the matter contained following observations with respect to the Noticees:
- “
- 5.1 The following claims are noted from the archived pages of the website of Profitsaim:

(a) Profitsaim provides Indian Stock Market Tips

- (b) ... Profitsaim.com has firmly settled itself as one of the most significant platforms for Analysts particularly technical analysts of Indian share market. It is one of the few sites providing research and information on Indian capital markets chiefly based on Technical Analysts ... We specially deals in Indian Share Market – Nifty Tips, Intraday Tips, Stock Tips, Trading Tips, Nifty Option, Nifty Future and Stock Option.
- (c) Profitsaim.com has established in year 2013. Profitsaim provides Indian Stock Market Tips by applying their technical knowledge in each & every stock via High Priority SMS Server.
- (d) From the services section of the website, it is observed that the entity provides services under three categories viz., 1.Equity (Stock) 2. Nifty & Banknifty and 3. Commodity (MCX).
- (e) We provide you around 3-4 Intraday Cash, Future or Options Market calls. Proper Follow-up messages of all calls through SMS & chat room. Nifty Review Support & resistance. All important news and economy updates. We have maintained a high level of accuracy in this plan on consistent basis. Complete Support will be provided throughout the trading day. We provide you daily 1-2 Cash, Future or Options Tips on Intraday Basis. We provide you daily 2-4 Cash, Future or Options Tips on Intraday Basis.
- (f) Pricing details for various packages are mentioned on the website as follows:

(In Rs)					
Sr. No.	Product	3 Months	6 Months	12 Months	Budget Package
1	Stock Cash	17250	26450	37950	58403
2	Stock Future	17250	26450	37950	58403
3	Stock Option	19550	31050	44850	63250
4	Index Future	13800	23000	34500	48300
5	Index Option	11500	18400	29900	43700
6	Bullions	19550	28750	46000	69000
7	Base Metals	17250	26450	37950	58403
8	Energy	17250	26450	37950	58403

5.2As regards the website, the following domain details are available on record:

Creation date: November 18, 2019

Registrant Name: Mr. Syed Ayaz.

Registrant's Address: # 638,9TH CROSS ROAD, 7TH MAIN ROAD, CAVERY NAGAR, BSK 2ND STAGE, Bengaluru – 560 070

Registrant's Phone No: +91. 99861 92024

Registrant's Email: syedayazbanks@gmail.com

5.3 As per the information available on the website, payment to subscribe to the services is to be made through payment gateway Razorpay, which is linked to a bank account with DBS Bank.

5.4 From the details provided by DBS Bank, it is observed that this bank account is a savings account and is in the name of Mr. Syed Ayaz and was opened on September 24, 2019. Further, as confirmed by DBS Bank, the said savings account was opened digitally through the application of the bank and hence, there is no account opening form. However, from the AOF submitted by Razorpay, it is observed that the Business Name is "Profitsaim", while the Business Category and Subcategory are "Financial Services" and "Financial and Investment Act", respectively.

5.5 The following information is gathered from the bank account and payment gateway statements(s):

Account Number & Bank	Period for which bank statement is obtained	Total Credits (Rs.)	No. of Credit transactions	Last Credit Transaction date	Closing Balance
881033238562 DBS Bank	24-Sep-2019 to 02-Nov-2020	19,77,239.04*	219	01-Jun-2020	0.00
Razorpay	29-Nov-2019 to 27-July-2020	13,97,366.00	129	19-May-2020	NA
Total		33,74,351.04	347		

* Credits received in the DBS bank account from Razorpay payment gateway is excluded from amount and total no of credit transactions to avoid double counting.

.....”

5. Mr. Syed Ayaz has contended that in the complaint referred in the interim order, the complainant - Mr. Nitesh Jain is proprietor of ProfitAim Research and the name of his website is "profitresearch.com", whereas the name of the firm of Mr. Ayaz is profitsaim and his website is "profitsaim.com", therefore, his firm is not related with the complainant's company/ firm and the complaint against his firm is otherwise bad-in-law and fact as well. In this regard, I note that complaint

received from Mr. Nitesh Jain, Proprietor of ProfitAim Research was only a starting point for undertaking examining of the matter by the complainant. I note that interim order has not been passed against the Noticees for misusing the name of ProfitAim Research, rather, the interim has been passed against the Noticees as their activities, as recorded in the interim order, were *prima facie* found to be in violation of the provisions of the SEBI Act, 1992 and IA Regulations, 2013. Therefore, the contention raised by the Noticees, in this regard are misplaced and hence, not tenable.

6. I note that the Noticees have not disputed the observations made in the interim order, as reproduced in para 4 above, including the fact that the services offered on <http://profitsaim.com> were subscribed by payment through payment gateway services offered by Razorpay and the funds after settlement from the payment gateway used to be credited into the DBS Bank Account of Mr. Syed Ayaz. I note that the Noticees have also not disputed the finding of the interim order that Mr. Syed Ayaz is the proprietor of Profitsaim and he used to maintain and manage the website URL <http://profitsaim.com>. Rather, I find that the Noticees have acknowledged that they used to offer investment advisory services and claimed that they were ignorant of the fact that such activities as carried out by them would require previous registration from SEBI and compliance with the IA Regulations, 2013. I note that the Noticees have also expressed their willingness to subject themselves to the existing regulatory purview of SEBI and seek registration as an Investment Advisor prospectively.
7. 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, 2013 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.”

8. I note that Noticees on their website i.e. www.profitsaim.com *inter alia* represented, “.....Profitsaim.com has firmly settled itself as one of the most significant platforms for Analysts particularly technical analysts of Indian share market. It is one of the few sites providing research and information on Indian capital markets chiefly based on Technical Analysts... We specially deals in Indian Share Market NiftyTips, Intraday Tips, Stock Tips, Trading Tips, Nifty Option, Nifty Future and Stock Option.....”. On the said website, Noticees also represented, “.....Profitsaim provides Indian Stock Market Tips by applying their technical knowledge in each & every stock via High Priority SMS Server.....”. From the details of various packages offered on the said website of the Noticees, I find that Noticees were providing services to clients in Stock Cash, Stock Future, Stock Option, Index Future, Index Option, Bullions, Base Metals and Energy. From the allegations made in the interim order and my findings recorded above, I find that Mr. Syed Ayaz was the sole proprietor of ‘Profitsaim’. Therefore, I find that ‘Profitsaim’ which is sole proprietorship concern of Mr. Syed Ayaz was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through its website www.profitsaim.com. I find that these services were being offered by the Noticees in lieu of the consideration which could be paid by the investor concerned through the payment gateway link provided on the website and the money from the payment gateway post settlement used to be credited into the DBS Bank Saving A/c. No. 881033238562 of Mr. Syed Ayaz. As mentioned in the interim, as per the bank account statement of DBS Bank Saving A/c. No. 881033238562 of Mr. Syed Ayaz, I find that around Rs. 33,74,351/- have been credited during the period from September 24, 2019 to November 2, 2020. In view of this, I find that Noticees were providing the investment advice, 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.

9. Section 12(1) of the SEBI Act, 1992 provides as under:

“12(1). 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:”

10. 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.
11. The activities of the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions show that the Noticees were holding themselves out and acting as an investment adviser. However, it is noted that the Noticees is not registered with SEBI in the capacity of Investment Advisor. Hence, I find that these activities/ representations as being made by the Noticees without holding the 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.
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, interim order records Rs. 33,74,351/- have been credited in the DBS Bank Saving A/c. No. 881033238562 of Mr. Syed Ayaz (which was linked to the payment gateway Razorpay on the website of Profitsaim) during the period from September 24, 2019 to November 2, 2020.

13. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11B(1) and 11D, read with of Section 19 of the SEBI Act, 1992, and in supersession of the directions in the interim order, hereby direct that:

- (i) The Noticees shall within a period of three months from the date of coming into force of this order, refund the money received from the clients/ investors, 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 order;
- (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. Further, the banks are directed to allow debit only for the purpose of making refunds, to the clients/investors who were availing the investment advisory services from the Noticees, as directed in this order, from the bank account of the Noticees, wherein debit has

been frozen by virtue of interim order dated November 12, 2020;

- (v) 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 this order, duly certified by an independent Chartered Accountant. The restraint contained in para 13(iv) shall cease to operate once the refund to the investors is complete and the report as contemplated herein is filed;
- (vi) In case of failure of the Noticees to comply with the aforesaid directions in sub-para (i) and (v), 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;
- (vii) 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, with immediate effect upto 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 13(i) above, whichever is later;
- (viii) 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, with immediate effect upto 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 13(i) above, whichever is later; and

- (ix) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 13(vii) and (viii) 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.
14. The direction for refund, as given in paragraph 13(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.
15. Further, the complainant is at liberty to approach appropriate forum/authorities for any alleged misuse of his trade name by the Noticees. In this regard, a reference may be made to the order dated April 06, 2021 passed by Hon'ble SAT in IL&FS Securities Services Ltd. Vs. SEBI wherein it was held that,-
- “.....Further, the main function of a Tribunal is to adjudicate the disputes between the parties and, on the other hand SEBI's main function is not to adjudicate disputes between the parties.....”*
16. 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 13 (i) and (ii) above, shall come into force on July 01, 2021.
17. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Place: Mumbai

Date: June 28, 2021

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA