

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 PROFICIENT GLOBAL RESEARCH, SOLE PROPRIETOR MR. ABHISHEK SURYAWANSHI

In respect of

Sl. No.	Name of the Noticee	PAN
1.	M/s Proficient Global Research (Proprietor Mr. Abhishek Suryawanshi)	GGGPS2334H

Background

1. The present proceedings emanate from an *ex-parte ad interim order* dated July 29, 2020 (hereinafter referred to as “***interim order***”) passed by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) under Sections 11, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) against Proficient Global Research and its proprietor Mr. Abhishek Suryawanshi (hereinafter individually referred to as “**Proficient/Mr. Abhishek**” and collectively as “**Noticees**”) as the unregistered investment advisory activities of the *Noticees* were *prime facie* found to be in violation of the provisions of Section 12(1) of the SEBI Act read with regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”). Further, in the *interim order*, the activities of the *Noticees* were also, *prima facie*, found to be fraudulent and manipulative and in violation of provisions of Section 12A (a), (b) & (c) of the SEBI Act and regulations 3 (a) (b), (c) & (d) and regulations 4(1) and 4(2)(k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”).
2. I find that the *interim order* passed in the matter contained following observations with respect to the *Noticees*:

- i. SEBI received a complaint from Trifid Research (a SEBI registered Investment Advisor) enclosing a complaint of its client namely Mr. Mohinder Kumar (hereinafter referred to as “**Complainant**”) alleging that the *Notices* are accepting payments from Trifid Research’s Clients in lieu of providing Portfolio Management Services (hereinafter referred to as “**PMS**”) to them. Trifid Research has *inter alia* stated that the *Notices* are able to lure the clients of Trifid Research to avail the PMS services being offered by them, and for this purpose, the *Notices* were using their (Trifid) name and putting up a weblink of www.TrifidResearch.com on their website i.e., www.proficientglobalresearch.com.
- ii. As per the information gathered from the archives of the website of the *Notices*, it was noted that Proficient had claimed to be an investment advisory firm that was engaged in providing various investment tips such as Stock tips, Future Tips, Option Call/Put, Equity Premium Combo Pack, Agri Commodity Tips, Forex Tips and Currency tips, etc. and was providing tips for investment planning and strategy through telephone calls and SMSes to the clients in lieu of monetary consideration and was further assuring profit to their clients through their PMS services. It is observed that the *Notices* are not registered with SEBI to perform the functions of an Investment Adviser in the securities markets. From the examination of the particulars of the bank account as mentioned on the aforesaid website, it is observed that the *Notices* were maintaining a bank account with ICICI Bank Ltd., bearing Account No. 051105009871, examination of which further revealed that the payments to the *Notices* could also be made through e-wallets i.e., through Paytm.
- iii. The *Complainant* stated that he paid the *Notices* INR 2,30,000/- in lieu of receiving PMS. He was initially offered to pay INR 50,000/- on which he was promised by the *Notices* a return of a sum of INR 3,00,000/-.
- iv. As per the information gathered from the bank statements collected from the ICICI Bank, it was observed that the total amount mobilized/credited by the *Notices* in the said bank account stood at INR 1,76,95,357/- from the account opening date i.e. January 02, 2018 till January 29, 2020. From the analysis of the aforesaid account statements, it has also been observed that the *Notices* have been receiving credits continuously during the period January 21, 2020 to January 29, 2020.
- v. It was further gathered that the *Notices* through their archive website www.proficientglobalresearch.com claimed that they offer “*profitable advice for the investors*” and “*we try to provide unique services and maximum profits to the customers*”.

3. On the basis of the aforesaid observations, the evidence gathered during examination and considering the nature of the alleged activities undertaken by the *Notices*, it was thought proper to pass an order and issue directions as a preventive measure for protecting the interest of investors in securities market and consequently, following directions were issued against the *Notices* in the *interim* order.
- i. *The Notices shall cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders.*
 - ii. *The Notices shall not to divert any funds collected from investors, kept in bank account(s) and/ or in their custody until further orders*
 - iii. *The Notices shall 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.*
 - iv. *The Notices shall immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, including the website, in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.*
 - v. *The Notices shall not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.*
 - vi. *If the Notices have any open positions in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Notices are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.*
 - vii. *The Notices shall 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.*
 - viii. *ICICI Bank wherein Proficient Global has bank account (Account No. 051105009871) is directed not to allow any debits/ withdrawals from and credits to the said accounts, without the permission of SEBI. The Bank is directed to ensure that this direction is strictly enforced.*

- ix. *The Depositories are directed to ensure that till further directions no debits and credits are made in the demat accounts of the Noticees.*
 - x. *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Fund units, held in the name of the Noticees, are not transferred or redeemed.*
4. The above *interim order* issued to the *Noticees* was also in the nature of a Show Cause Notice (hereinafter also referred to as “**SCN**”) 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 activity of the *Noticees* be not treated as unregistered activity in violation of the SEBI Act and relevant Regulations and why various representations made/ services offered by them in securities market should not be treated as a fraudulent practice/act/conduct, in terms of PFUTP Regulations, 2003. The *Noticees* were provided with the opportunity to file their objections/reply, if any, within 21 days from the date of the *interim order* and were also provided with an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request to be made by the *Noticees*, in that regard.
5. I note from the records available before me that the *interim order* was delivered to the *Noticees* at their address i.e., S/o Madhusudan Suryawanshi, Ward No 3, Gangiwada, Chhindwara, Madhya Pradesh – 480001 through SPAD on August 08, 2020. I note that the *Noticees* have neither filed any reply/objections to the *interim order* nor have sought any personal hearing. However, in conformity with the principles of natural justice, an opportunity of personal hearing was provided to the *Noticees* on July 29, 2021 for which the hearing notice dated June 24, 2021 was delivered upon the *Noticees* through SPAD on the aforementioned address on June 28, 2021. Further, the scanned copy of the aforesaid hearing notice dated June 24, 2021 was also sent to the *Noticees* vide email dated June 24, 2021. In response to the said email of SEBI, the *Noticees* vide email dated July 26, 2021 have confirmed having received the hearing notice dated June 24, 2021.
6. Accordingly, on the scheduled date of hearing held through video conferencing, Mr. Abhishek appeared in person and made oral submissions. During his presentation, Mr. Abhishek did not deny the charges/allegations levelled against him in the *interim order*, however submitted that the amount of INR 1,76,95,357/- credited in the ICICI Bank Account No. 051105009871 during the period between January 02, 2018 and January 29, 2020 does not entirely relate to fees received from his investment advisory services but also includes some income relating to mushroom cultivation business undertaken by him.

7. Subsequently, as per his submissions made during the personal hearing, Mr. Abhishek vide emails dated August 20, 2021 and August 23, 2021 has provided the following and clarifications:
- i. The bank account statement for his ICICI Bank Account No. 051105009871 for the period January 01, 2020 to July 29, 2021
 - ii. That the *Notices*'s previous Income Tax Return did not mention mushroom business income
 - iii. That only one complaint from Mr. Mohinder Kumar is pending against the *Notices*.
 - iv. That the *Notices* do not have any clients details as at the time of closing advisory services, all the data were lost and they are now trying to recover the same.
8. I have carefully perused the facts recorded in the *interim order*, the submissions made by the *Notices* and other materials available on record. I note that the limited issue that require adjudication in the extant proceedings in light of the charges so levelled against the *Notices* in the *interim order* is as under:
- *Whether acts of the Notices as imputed in the interim order, have violated the provisions of SEBI Act, 1992 read with LA Regulations, 2013, and PFUTP Regulations, 2003 while providing the services related to Investment Advisory without having proper registration.*
9. Before I proceed to examine the issue framed above, it would be appropriate to refer to the relevant provisions of securities laws alleged to have been violated by the *Notices*, which are being reproduced hereunder:

“SEBI ACT, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

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:*

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. *No person shall directly or indirectly—*

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

SEBI (INVESTMENT ADVISER) REGULATIONS, 2013

Application for grant of certificate.

3. (1) *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:*

SEBI PFUTP REGULATIONS, 2003

Definitions

2. (1) *In these regulations, unless the context otherwise requires, —*
 - (c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
 - (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
 - (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
 - (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
 - (4) a promise made without any intention of performing it;*
 - (5) a representation made in a reckless and careless manner whether it be true or false;*
 - (6) any such act or omission as any other law specifically declares to be fraudulent,*
 - (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
 - (8) a false statement made without reasonable ground for believing it to be true.*
 - (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

And “fraudulent” shall be construed accordingly;

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -*
 - (k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities”*

10. As stated earlier SEBI had received a complaint *inter alia* alleging that the *Notices* were accepting payments from the clients of a SEBI registered Investment Advisor i.e., Trifid Research in lieu of providing unauthorized PMS to them and had further received INR 2,30,000/- from the *Complainant* in this regard. The *Complainant* was initially asked to pay INR 50,000/- on which he was promised a return of INR 3,00,000/- as profit, by the *Notices*. The aforesaid complaint was supported by the SMSes and emails issued to the *Complainant* by the *Notices*. From further scrutiny, it emerged that the *Notices* were hosting a website called www.proficientglobalresearch.com which was not found to be active at the time of passing of *interim order*, however, from the archived pages of the website obtained from www.web.archive.org, it was observed that the *Notices*, at the time of asking the *Complainant* to invest as per the investment services rendered to him by them, claimed the following through their website:

- a) *Proficient Global Research is one of the leading Financial and Investment advisory companies in India. ... Proficient Global Research has proved itself as a company that produces; delivers tips and recommendations with high accuracy for Derivatives, Equities, Commodities and Forex Market.*
- b) *Not only we provide you a reminder alert via SMS but also support you through phone till your positions are open in the market. We focus on every detail of the process and only then come out with the recommendation. We give proper support along with the technical details of entry-level, exit-level, quantity, holding, trend reversals, resistance, support, etc.*
- c) *Services*
 - “...
Stock Tips*
 - i. *What you Get? Here in daily you will get 3-4 Cash Market Calls Weekly Momentum Calls 1-2 Per Week Follow Ups & All Important News & Information Nifty Review, Resistance & Support World Market, Singapore Nifty.....*
 - Future Tips*
 - ii. *What you Get? Daily 3-4 Stock Future Calls with Proper TGT Weekly Momentum Calls 1-2 Per Week Follow Ups & All Important News & Information Nifty Review, Resistance & Support World Market, Singapore Nifty &.....*
 - Option Call/Put*
 - iii. *What you Get? Herein we will provide you around 30-35 calls on Derivative Options per month Strategies will be on Nifty and stocks both Follow Ups & All Important News & Information Nifty Review, Resistance....”*

11. It is further noted from the email and SMSes received by the *Complainant* from the *Notices* that the *Notices* had *inter alia* stated/claimed in their communications as under:

- a) *“Buy 10 Lots of Adaniports May Futures @ 389”*
“Sell May Fut. 10 Lots Adaniports @ 393.50. Booked profit INR 1,11,500. Ledger Balance INR 4,56,925”
“Buy June MCX Gold 10 Lots @ 31395”
“Sell MCX June Gold 10 Lots @ 31460. Booked profit INR 60,000/- Ledger balance INR 5,16,925/-”.
- b) *“Greetings!!! We are delighted to offering you one of our exclusive services known as Portfolio Management Services (PMS) where you will get proper recommendations and follow-ups through SMS, telephonic. Here in details:*

Required Capital – INR 50,000/-

Net Return – INR 3,00,000/-

Duration – 90 days

Service Fee – INR 75,000/- (Including GST)

We are happy to inform you can pay our Service Fee from profit through our services.

Your service will expire after INR 3 Lakhs return.

By Initiating our Portfolio Management Services, we require below mentioned KYC Doc's such as Aadhar Card, PAN Card, E Mail ID and Contact Details”

12. I note that the following pricing details for availing various types of services from them were also announced on the above said website of the *Notices*:

Product	Monthly (in INR) +GST	Quarterly (in INR) +GST	Semi Annually (in INR) +GST	Annually (in INR) +GST
Equity Premium Report	11,500	28,750	51,750	1,09,250
Commodity Premium Report	11,500	28,750	51,750	1,09,250
Currency Premium Report	11,500	28,750	51,750	1,09,250
Stock Tips	69,00	17,200	30,500	50,000
Equity Fortune	16,100	36,800	62,000	1,12,000
Fortune Future Pack	23,000	59,800	1,03,500	1,40,300
Nifty Futures Tips	6,700	16,100	26,400	44,800
Option? Call & Put Tips	7,400	16,100	27,500	47,100
Delivery Pack	11,500	24,100	37,900	51,700
Equity Premium Combo	24,100	62,100	1,09,200	1,84,000
Bullion Pack	8,600	21,800	39,000	67,800
Base Metal Pack	8,600	21,800	39,000	67,800
MCX Tips (COMBO)	14,300	36,800	62,100	1,09,000
MCX Value Pack	44,850	1,09,200	1,66,700	2,81,700
Agri Commodity Tips	11,500	29,300	52,900	98,900
NCDEX Premium Tips	21,850	44,800	67,800	98,900

COMEX Tips	28,700	57,500	86,200	1,38,000
Forex Tips	7,600	20,700	35,600	63,200
Forex International Tips	7,600	20,700	35,600	63,200
NCDEX Premium Plus	33,900	83,300	1,44,300	2,47,800
Forex International Premium	45,400	1,02,900	1,71,900	2,75,400
Comex Premium	45,400	1,02,900	1,71,900	2,75,400
Fundamental Value picks(Basic pack)	Coming soon	17,250	28,750	46,000
Fundamental Value picks(Premium pack)	Coming soon	28,750	51,750	92,000
Fundamental Value picks(HNI pack)	Coming soon	40,250	69,000	1,26,500
PCG Future	One Pack for INR 75,000 + GST(Monthly)		INR 15,000 + GST { Extended Technical Support }	
PCG Commodity	One Pack for INR 75,000 + GST(Monthly)			
PCG Equity	One Pack for INR 49,000 + GST(Monthly)		INR 15,000 + GST { Extended Technical Support }	

13. From the aforesaid narration of facts, the reply submitted by the *Notices* in response to the allegations made in the SCN and submissions so advanced in the course of personal hearing, I find that M/s. Proficient Global Research, which is the sole proprietorship concern of Proprietor Mr. Abhishek Suryawanshi was indeed engaged in giving advice in an unauthorized manner relating to investing in, purchasing, selling or otherwise dealing in securities and various other investment products of securities, as was proclaimed by the said firm through its website www.proficientglobalresearch.com, although such services being provided by the *Notices* were referred to as PMS. In this regard I note that one of the reasons which enticed the investors for availing its services/packages, as mentioned in its website, was that it offered “*profitable advice for the investors*”, “*we try to provide unique services and maximum profits to the customers*”.

At this juncture, it is pertinent to look at the definition of Investment Adviser (or short “IA”) as articulated in regulation 2 (1) (m) of the IA Regulations, 2013 which states 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*”. Further, I have also perused regulation 2(1)(l) of the IA Regulations, 2013 which 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.*”

14. In the light of the aforesaid definitions and the content published on the website of the *Notices* as well as the allegations imputed in the *interim order*, I note that the *Notices*, through their website were offering investment advice as defined under regulation 2(1)(l) of the IA Regulations, 2013 by offering to give advice related to investing in, purchasing and selling of securities and were also offering various service packages to investors at large, for subscription to securities which were nothing but purely in the nature of the services of investment advisory.
15. I also note that the *interim order* has recorded that the aforesaid investment advisory services were being offered by the *Notices* in lieu of monetary considerations which was being paid by the concerned investor into the ICICI Bank Account number 051105009871, as per the instructions of the *Notices* the details of which were also provided on the website of the *Notices* under the payment option section. As noted above, the ICICI Bank account statement of the *Notices* reveals that an aggregate amount of around INR 1,76,95,357/- has been credited in the said account starting from the account opening date i.e. January 02, 2018 till January 29, 2020. It is also noted that the aforesaid bank account was receiving continuous credits as per the latest bank statement referred to in the *interim order*, during the examination period as follows:

Date	Narration	Credit entry
21-01-2020	NEFT-N021201041403853-ABHISHEK SOORYAVANSHEE-TRANS	30,000
22-01-2020	UPI/002228455009/For trading/vinays1706@ybl/DBS Ba	3,500

22-01-2020	UPI/002228659253/MO pay/8109360168@ybl/HDFC BANK L	80,000
22-01-2020	UPI/002368017168/Payment from Ph/7004666758@ybl/St	19,800

16. Considering the above factual analysis about the activities of the *Notices* as proclaimed by them on their own website, the details of payment received by the *Notices* from the *Complainant*, contents of the email and SMSes sent to the *Complainant* by the *Notices*, the bank statement of the *Notices* (supported by the KYC/ bank account statements documents of the *Notices*), and most importantly, the fact that there has been no denial or objection to the charges/allegations levelled against the *Notices* in the *interim order*, by Mr. Abhishek during the course of hearing held on July 29, 2021, it leaves no further doubt to conclude that the alleged activities indulged into by the *Notices* squarely fall under the category of investment advisory services as defined under regulation 2 (1)(l) of the IA Regulations, 2013.
17. Further, the credit entries in the bank account of the *Notices* are supported by narrations such as trading etc., which clearly highlight the fact that the monies that were being received in the said Bank Account were received towards fees from the business operations of the *Notices* as an Investment Adviser. Considering the fact that the website of the *Notices* clearly showed that its services were in the nature of investment advisory services coupled with the fact that the aforesaid Bank Account was specified in the website itself for receiving fees from the clients, it leads to an unassailable conclusion that the said pay-in amounts as reflected in the said ICICI Bank Account were in fact the amounts received towards consideration in lieu of the advisory services offered by the *Notices*.
18. In this regard, during the course of the hearing held on August 12, 2021 Mr. Abhishek had orally submitted that the total amount of INR 1,76,95,357/- credited in the ICICI Bank Account No. 051105009871 during the period between January 02, 2018 and January 29, 2020 did not entirely relate to fees received from investment advisory services but also included income earned from mushroom business undertaken by him. To verify this claim, the *Notices* were advised to provide the copies of their Income Tax Return (“**ITR**”) filed for FY 2017-18, 2018-19 and 2019-20 alongwith the Profit and Loss showing income related to mushroom business that has been offered to tax in the I T Returns. However, as recorded in paragraph 7 above, the *Notices* have submitted that their previous ITRs, did not mention mushroom business income. Thus, in the absence of any documentary evidence to support any income or loss from mushroom business, it

can be conclusively inferred that all the amounts that have been credited to the ICICI Bank Account of the *Notices* during the above stated period, were actually received by the *Notices* in lieu of providing investment related services as indicated on the website of the *Notices*.

19. In view of the above and as discussed earlier, I have no doubt left in my mind that in terms of regulation 2(1) (l) of the IA regulations, 2013 such kind of advisory services rendered by the *Notices* in fact constituted “investment advice” and the *Notices* were providing investment advice, in lieu of consideration which was received and credited into their ICICI Bank Account. Therefore, there is no ambiguity left that M/s. Proficient Global Research, and its proprietor Mr. Abhishek Suryawanshi were engaged in the business of providing investment advice to the public, in lieu of monetary consideration and were thus, acting as an ‘investment adviser’, as defined under regulation 2(1)(m) of the IA Regulations, 2013.
20. It is relevant to note here that in order to protect the interest of investors and to preserve the integrity of the securities market, the IA Regulations, 2013 provide various safeguards to ensure that the interest of the investors who receive investment advice is protected. One such safeguard provided under the said Regulations 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, which, *inter alia*, provides that, 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 SEBI and has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further, various crucial safeguards provided under IA Regulations, 2013 include a minimum professional qualification and net-worth requirement for investment adviser, disclosure of all conflicts of interest, prohibition on investment adviser to enter into transactions on its own account which is contrary to advice given by investment adviser to its clients for a period of 15 days from the day of such advice given , mandatory risk profiling of investors, maintaining documented process for selecting investments for clients based on client’s investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.
21. The activities of the *Notices*, as brought out from various materials described above including their website, seen in the backdrop of the aforesaid regulatory provisions show that the *Notices* were holding themselves out and acting as an IA. However, it is noted that the *Notices* are not registered with SEBI in the capacity of IA. Hence, I find that these activities/ representations as were being made by the *Notices* 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.

22. In order to ensure protection of investors who receive investment advice, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and has to conduct its activities in accordance with the provisions of the relevant SEBI Regulations.
23. In my view, unregistered investment advisors like the *Notices* in the present case, can put the interest of the investors at great risk by misleading them or misutilising their funds to the detriment of the interest of the investors. In the present case, the *Notices* on their website have, *inter alia*, mentioned that M/s. Proficient Global Research offers advices in stocks, future and option (F&O), and provide daily and weekly reports having stock and commodity market overview etc. The *Notices* on their website have further represented that M/s. Proficient Global Research, is a leading financial and investment advisory firm having a team of highly qualified and experienced analysts having massive experience in carrying out capital market research.
24. As stated above, SEBI Act, 1992 and IA Regulations, 2013 mandate that an investment advisor has to hold a certificate of registration to act as such. However, as already pointed out above, I find that the *Notices* were not holding any certificate of registration from SEBI to act as investment advisor. The *Notices* also claimed “assured returns/profits” for clients’ money knowing fully well that every investment in the market is subject to market risk and the said investment made by the client can also run into losses. Thus, the claims/representations made by the *Notices* on their website were blatantly misleading and were made only to allure the investors to avail investment advisory being offered by the *Notices*. The *Notices* have knowingly misrepresented on the websites floated by them that they are experts in stock market analysis and are experienced in investment advisory without even holding any registered Investment Advisor certificate., The *Notices* offered their investment advisory services through their website, in an illegal manner to investors, with the objective of raising money from the investors by way of subscriptions to their various plans. The above discussed misleading representations made by the *Notices* are therefore, deceptive and fraudulent in nature and are well covered within the definition of “fraud” defined under regulation 2(1)(c) of the PFUTP Regulations, 2003. It is noted that fraudulent activities/ conduct/ act/ practice of the *Notices*, as discussed above, are also in violation of provisions of Section 12A (a), (b), (c) of the SEBI Act, 1992 and regulations 3 (a), (b), (c), (d) and regulations 4(1) of PFUTP Regulations, 2003. Regulation 4(2)(k) of the PFUTP Regulations, 2003, provides that dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves even disseminating information or advice through any media, whether physical or

digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities. In the present case, the *Notices* without holding a certificate of registration as investment adviser have not only knowingly held themselves out as investment adviser but also have, *inter alia* promised assured returns on their website. Thus, I find that the *Notices* have also violated regulation 4(2)(k) of the PFUTP Regulations, 2003.

25. I note that the materials available on record do not indicate the exact amount of fees collected by the *Notices*, as a result of providing investment advice to investors in violation of the provisions of the IA Regulations, 2013. However, the *interim order* records that the *Notices* have received credits worth of INR 1.76 Crore (INR 1,76,95,357/-) in their ICICI Bank account number 051105009871 and this account number was also published on their website to enable the investors to make payment to the *Notices*. Additionally, from the complaint that was received by SEBI against the *Notices*, it is observed that the *Complainant* had claimed that he had paid an amount of INR 2,30,000/- to the *Notices*, for availing investment advisory services / PMS from them.
26. In view of the foregoing discussions and my observations/ findings about the activities engaged in by the *Notices* in rendering investment advisory in an unauthorized and illegal manner, as has been established in facts & circumstances of the case, in order to achieve the avowed object of SEBI Act, 1992, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4), 11B (1) and 11D, read with of Section 19 of the SEBI Act, 1992 and regulation 11 of the PFUTP Regulations, 2003, while disposing of the allegations levelled in the *interim order* cum SCN hereby direct the following:
- i. The *Notices* shall within a period of three months from the date of this Order, 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. To give effect and implement the above direction, the *Notices* shall cause public notice to be issued 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 their 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 *Notices* 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 *Notices*, as directed in this Order, from the bank account of the *Notices*, wherein debit has been frozen by virtue of *interim order* dated July 29, 2020;
- v. The *Notices* shall resolve all the complaints pending against them and file a report of such resolution with SEBI addressed to the Division Chief, Investment Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 30 days from date of this Order.
- vi. After completing the aforesaid repayments, the *Notices* shall file a report of such completion with SEBI addressed to the Division Chief, 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 on sale of assets in sub paragraph (iv) shall cease to operate once the refund to the investors is complete and the report as contemplated herein is filed;
- vii. The *Notices* 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 02 (two) years from the date of this Order or till the expiry of 02 (two) years from the date of completion of refunds to investors as directed in sub-paragraph (i) above, whichever is later;
- viii. The *Notices* 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 02 (two) years from the date of this Order or till the expiry of 02 (two) years from the date of completion of refunds to investors as directed in sub-paragraph (i) above, whichever is later; and
- ix. The *Notices* shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in sub-paragraph (vii) and (viii) above, either directly or indirectly, investment advisory services or any other activity in the securities market

without obtaining a certificate of registration from SEBI as required under the securities law.

- x. The *Notices* shall not to divert any funds collected from investors, kept in bank account(s) and/or in their custody except for the purpose of refund as directed in sub-paragraph(i).
 - xi. The *Notices* shall 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 for the purpose of refund as directed in sub-paragraph(i) and until the refund is completed and a report as mandated under sub-paragraph (vi) is filed with the SEBI.
27. The direction for refund, as given in paragraph 26(i) above, does not preclude the clients/investors of the *Notices* from pursuing the other legal remedies available to them under any other law, against the *Notices* for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.
28. This Order shall come into force with immediate effect.
29. Obligation of the *Notices*, 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 *Notices* in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
30. A copy of this Order shall be served upon the *Notices*, all the recognized Stock Exchanges, Depositories, registrar and transfer agents and Banks for necessary compliance with the above directions.

-Sd-

DATE: September 23, 2021

PLACE: Mumbai

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA