

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B(1) OF SEBI ACT, 1992 IN THE MATTER OF
ALWAYS GAIN ADVISORY SERVICES

IN RESPECT OF

Serial No.	Name of Entity	PAN
1.	Always Gain Advisory Services	ABAF7501M
2.	Mr. M Ashok Kumar	AWIPA1302K
3.	Mr. S Ramakrishnan	BPRPS3477N
4.	Mr. G. Manohari	CYHPM2991K

Background

1. The present proceedings emanate from receipt of a complaint against Always Gain Advisory Services (hereinafter referred to as '**Noticee no. 1**/'**firm**') by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), subsequent to which SEBI conducted an examination in the activities of the firm which led to the passing of an *ex-parte ad-Interim Order* cum show cause notice dated December 07, 2020 (hereinafter referred to as "**Interim Order**"). In the said preliminary examination, it was found out that the *firm*, which is a partnership firm, and its partners - Mr. M Ashok Kumar (hereinafter referred to as '**Noticee no. 2**'), Mr. S Ramakrishnan (hereinafter referred to as '**Noticee no. 3**') and Mrs. G. Manohari (hereinafter referred to as '**Noticee no. 4**' and hereinafter collectively referred to as "**Noticees**") were providing investment advisory services without obtaining a certificate of registration from SEBI, which is in violation of the provisions of Section 12(1) of the Securities and Exchange Board

of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) read with regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”).

2. I note that the *Interim Order* contained the following observations with respect to the *Notices*:

- a. The *firm* was operating two different websites under domain names- <https://alwaysgain.com> and <https://alwaysgain.in>. Both the websites were found having displayed the same contact number, email id and bank account information wherein the website- <https://alwaysgain.com> was specifically dedicated for commodity market tips, and the second website- <https://alwaysgain.in> was dedicated for tips related to the equity and derivative segments of the securities market.
- b. The *firm* held itself out as an Investment Advisor and collected subscription fees from investors for providing tips/recommendations to invest in securities market without obtaining registration under IA Regulations, 2013.
- c. From the bank accounts of the *firm*, it was *prima-facie* observed that the *firm* had collected a sum of approximately INR 1.09 Crores during the period September 8, 2014, to November 23, 2020, by way of 1,468 credit transactions as subscription fees in relation to the investment advisory activities carried on by the *firm*.

3. Accordingly, in order to protect the investors at large from the above unauthorized acts of the *Notices*, to restrain the *firm* from continuing to act as an unregistered investment advisor, to prevent further mobilisation of funds from

the innocent and gullible public and also to prevent the diversion of money already collected from investors, the following directions were passed in the matter *vide* the said *Interim Order*:-

“a Always Gain Advisory Service and its partners (current and past), Mr. M Ashok Kumar, Mr. S Ramakrishnan and Mr. G Manohari are directed to:

- i. 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. Not to divert any funds raised from investors, kept in bank accounts and/or in their custody until further orders.*
- iii. 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. 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.*
- v. 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. 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.*

- vii. *To submit the number and details of clients who have availed their investment advisory services and to submit details of fees collected from each such client, immediately but not later than 5 working days from the date of receipt of this order.*
- b. *If Always Gain Advisory Service or its partners 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. Always Gain Advisory Service and its partners 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.*
- c. *ICICI Bank Ltd. (A/c no.: 60XXXXXXXXXX43) and Axis Bank Ltd. (A/c no.: 91XXXXXXXXXXXX21), wherein Always Gain Advisory Service is holding an account, are directed not to permit any debits / withdrawals and not to allow credits to the said accounts, without the permission of SEBI. CC Avenue where Always Gain Advisory Service is holding an account, is directed to deactivate the said account. The Banks and payment gateway are directed to ensure that all the above directions are strictly enforced.*
- d. *The Depositories are directed to ensure that till further directions not to permit any debits and not to allow any credits in the demat accounts of Mr. M Ashok Kumar, Mr. S Ramakrishnan and Mr. G Manohari, held jointly or individually.*
- e. *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 Always Gain Advisory Service, are not transferred or redeemed. Further, Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including mutual fund units, held in the name of Mr. M Ashok Kumar, Mr. S Ramakrishnan and Mr. G Manohari, held jointly or individually, are not transferred or redeemed.”*

4. The *Interim Order* also called upon the *Notices* to show cause as to why the services offered by them should not be held as "*Investment Advisory Services*” in terms of IA Regulations, 2013 and, thereby, their activities be treated as unregistered investment advisory activities. The *Notices* were also asked to explain as to why appropriate directions, under Sections 11(1), 11B(1) and 11D of the SEBI Act and relevant SEBI Regulations shall not be issued, including direction for continuation of the directions already issued to prohibit them from buying, selling or otherwise dealing in the securities market, either directly or indirectly, in any manner whatsoever, for a particular period or direction under Sections 11(1) and 11B(1) of SEBI Act to refund the amount collected from the investors/clients.
5. I note from the records that the *Interim Order* was served on the *Notices* vide SEBI letter dated December 09, 2020. In response to the same, vide their separate letters received on December 24, 2020, by SEBI, the *Notices* have submitted their identical replies to the said *Interim Order*. Thereafter, in order to ensure due compliance with the principles of natural justice and to accord fair opportunity to defend the allegations levelled against them in the *Interim Order*, an opportunity of hearing was granted to the *Notices* on September 21 2021, during which *Notices no. 2 to 4* appeared in person, via videoconferencing and reiterated the submissions made vide their respective letters dated December 24, 2020.
6. The summary of the oral and written submissions made by the *Notices* is given below-
 - i. Initially the *firm* was set up as a partnership firm between *Notices no. 2 and 3*, wherein *Noticee no. 3* retired from the said *firm* in April 2019. Upon his retirement, *Noticee no. 4*, wife of *Noticee no. 2*, was inducted as a partner.

- ii. The *Notices* have already shut down their investment advisory activities and even the office has been closed w.e.f. December 07, 2020 due to medical and personal issues and their website has already been shut down and all contents removed from internet.
- iii. They had no intention of violating the provisions of any laws and the alleged violations have occurred due to the unawareness of Regulations and lack of understanding about the applicable laws.
- iv. When *Noticee no. 2* started providing investment advisory services, the SEBI (Investment Advisers) Regulations, 2013 were not in force and there was no restriction in carrying out such activities.
- v. Only small amounts were collected for providing tips. Further, it was mentioned on the *firm's* website itself that investment is at the client's own risk and before making any trades the clients were advised to consult their registered investment financial advisers.

CONSIDERATION

- 7. I have carefully considered the facts narrated in the *Interim Order*, the replies filed and other materials available on record. I note that the only issue that arises for consideration in these proceedings is whether the *Notices* have acted as unregistered investment advisers in violation of the provisions of the SEBI Act, 1992 and IA Regulations, 2013.
- 8. Before moving forward to address this issue, it will be appropriate to refer to the relevant provisions of the SEBI Act, 1992 and IA Regulations, 2013 alleged to have been violated by the *Notices*.

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:

IA 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:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation (2) within the said period of six months, till the disposal of such application.”

9. I note that the present proceedings emanate from certain information received by SEBI stating that the *Noticees* were providing investment advisory services without obtaining registration from SEBI. Pursuant to the same, SEBI conducted a preliminary examination wherein it was *prima facie* observed that the *Noticees* were engaged in providing investment advisory services for consideration, and

therefore, in order to prevent further loss to the investors and protect the integrity of the securities market, the *Interim Order* was passed.

10. I note from the records that the office of the *firm* is located at Madurai in Tamil Nadu. Further, it is noted that SEBI had examined the two websites hosted by the *Noticee no. 1* at the respective addresses— <https://alwaysgain.com> and <https://alwaysgain.in>, wherein the following claims were made on the earlier website (viz. <https://alwaysgain.com>)-

- i. *Always Gain is the Best MCX Commodity Market Advisory Service at Tamil Nadu in India. Our Significant Goal is to give smart PROFIT to our valuable Customers. Always Gain's Aspiration is “.*
- ii. *We are furnishing COMMODITY MARKET TIPS in MCX BULLION, MCX ENERGY, and MCX BASE METALS Segments with Most Accuracy.*
- iii. *We are furnishing calls to OUR CUSTOMERS by our Highly Qualified and Experienced analysts. So Customers can get HIGHER RETURNS in MCX Commodity Market.*
- iv. *We provide you with the BEST MCX COMMODITY Tips whether the market is bullish or bearish by keeping an eye on the global markets and co-relate the Indian markets with its.*
- v. *We offer comprehensive answers, analysis support to Our Customers. And also we ensure to make that you can book most returns within the Commodity Market by our enchanting Commodity tips.*
- vi. *Our foremost emphasis is to maintain the best customer relationship by furnishing individualistic and excellent customer support through our accurate tips which gives you exclusive profit.*
- vii. *Always Gain Advisory Services is the Top most Commodity tips provider in India.*

- viii. *Our Technical Research Team and Talented, Technically and Fundamentally knowledgeable and Our Technical analysis Team and gifted, Technically and basically knowledgeable specialists is aware of the pulses of market volatility and news gathering team for spy on world market with 24/7 and 365 days around.*
- ix. *Whatever the market condition customers can earn smart profit and also whatever may be we will exit all of our calls with minimum profit or minimum loss in intraday itself.*

I find claims on the similar lines on another website viz. www.alwaysgain.in.

11. On a further perusal of the websites, it is observed that the *firm* was providing investment advisory services in the equity, derivatives and commodities segment of the securities market in the form of various packages publicized on its websites. Pricing of some of the services offered by the *firm* as per its websites was as under:

S. No.	Package	One Day Fee (in Rs.)	One Week Fee (in Rs.)	Two Weeks Fee (in Rs.)	One Month Fee (in Rs.)
1	Stock Intraday Cash Tips	500	2000	4000	8000
2	Stock Premium Cash Tips	700	2750	4500	9000
3	Stock Intraday Future Tips	1000	2500	5000	10000
4	Stock Premium Future	1500	3500	7000	14000
5	Stock Positional Future Tips	0	3250	6500	13000
6	Stock Option Tips	1000	2500	5000	10000
7	Stock Intraday Option Tips	800	2250	4500	9000
8	Stock Nifty Future Tips	800	2250	4500	9000
9	Stock Nifty Option Tips	700	2000	4000	8000
10	Premium Jackpot Tips	1800	4250	8500	17000
11	Intraday Jackpot Tips	1200	3500	7000	14000
12	Positional Jackpot Tips	0	3750	7500	15000
13	Multibagger Future Tips	0	3750	6500	13000

14	Money Stock Tips	1000	5000	10000	20000
15	Fortune Stock Tips	1800	3550	7100	14200

12. Some of the features of services provided by the *firm*, as claimed by the *Notices* on their websites are as under:

i. *Intraday Stock Cash Tips: Our Intraday stock Cash tips services are particularly intended for intraday cash traders who are traded in NSE. Always gain advisory service gives recommendations with 85-90% accuracy which creates profit for our customers. This service is suitable for those customers who want to earn a handsome profit with less investment and want to take minimum risk.*

1. *Service Features:*

- a. *We are providing you 1-2 Intraday ACCURATE stock CASH MARKET TIPS.*
- b. *Earn PROFIT in any MARKET scenario, Advices from experts only.*
- c. *Calls given through SMS and on our own (alwaysgain) instant messenger LIVE and GTALK (hangouts)*
- d. *Complete Follow Ups given for all the TIPS*
- e. *Get instant MARKET hours Support in phone and live messenger*

2. *MCX Energy Tips: Service Features*

- a. *We provide 2-3 Intraday Accurate MCX Energy Calls of NATURALGAS and CRUDEOIL.*
- b. *Calls will be given based on technical analysis of Commodity Market.*
- c. *We assure you 85-90% accuracy on reliable basis.*
- d. *Proper follow up will be given to each and every single decision without any delay to our customers.*
- e. *You will get adequate time to enter into the call and exit from the call so; you can exploit your profit with us.*

f. Telephonic Support will be offered from 9 AM to 10 PM.

Our Commodity Calls will be given through SMS on mobile

13. In this respect, it is noted that the IA regulations, 2013 define the terms ‘investment advice’ and investment advisor as follows

*“**investment advice**” means “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”.*

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;

*“**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.”*

14. It is observed from the material available on record that the *firm* was incorporated as a partnership firm on July 24, 2014. The material available on record show that the partners of the *firm* and respective tenures were as under:

Sl. No.	Name of the Partner	Tenure
1	Mr. M Ashok Kumar	24-7-2014 till date
2	Mr. S Ramakrishnan	24-7-2014 to 14-4-2019
3	Mrs. G Manohari	9-4-2019 till date

15. Further, from the *firm*’s account opening form with ICICI Bank Ltd., it is noted that under the heading “Type of Industry”, it is mentioned that the *firm* is in the

“Advisory Service” industry. Moreover, from the merchant details submitted by Avenues (India) Pvt. Ltd. (Payment Gateway–CCAvenue), it is observed that under the heading “Service/Product Description” is mentioned as “share market advisory service provider”.

16. It can therefore be noted that advisory services which were being offered by the *Notices* and publicized on the aforementioned websites of the *firm* squarely fall within the definition of ‘investment advice’ under the IA Regulations. Further, it can be noted from the definition of ‘investment adviser’ that any person who provides ‘investment advice’ for consideration comes within its ambit. As already stated in the preceding paragraphs, both the websites of the *firm* had clearly listed out the fees being charged for the various investment advisory packages being offered. It was further provided on the *firm*’s websites that payments can be made to the *firm*’s bank accounts maintained with ICICI Bank Ltd. (A/c. No. 60XXXXXXXXX43) and Axis Bank Ltd. (A/c. No. 91XXXXXXXXXXXX21).

17. The transactions observed in the abovementioned bank accounts during the period of operation of the *firm* till the passing of *Interim Order* are summarized as under:

Transaction Period	Bank Name and account number	No. of transactions	Amount Collected in Rs.
November 7, 2014 to November 23, 2020	Credits by CC Avenue to Axis Bank (A/c. No. 91XXXXXXXXXXXX21)	403	44,06,806
September 8, 2014 to November 23, 2020	Direct Credits to Axis Bank A/c. No. 91XXXXXXXXXXXX21	333	22,92,997

September 17, 2017 to November 20, 2020	Direct Credits to ICICI Bank A/c. No. 60XXXXXXXXX43	732	42,27,489
Total		1,468	1,09,27,292

18. From further analysis of the Bank statements, the following is observed:

- i. The total credit received in the aforesaid accounts aggregated to approximately INR 1.09 crore during the period September 8, 2014, to November 23, 2020.
- ii. It is observed that there are 1,468 credit transactions received in the said bank accounts. From the narrative of those transactions, it appears that the payments have come from various investors/clients. An illustrative list of narrations in support of those credit entries found in the ICICI Bank account of the *firm* is as under:

Transaction Date	Narration	Credit (Rs.)
6-10-2018	NEFT-N279180649225129- PRAKASH T J-Multi bagger fut	12000
26-10-2018	MMT/IMPS/829914820803/MB: NIFTY FUTUR/MANU V /K	2000
8-11-2018	NEFT-N312180675875171- PRAKASH T J-Nifty future-001	8000
12-11-2018	Mmt/imps/831410109322/Option intraday/RAJESH L /H	2100

19. In the present matter, I note that there is no dispute regarding the fact that the *Notices* were engaged in providing advisory services to the public for investment in various products pertaining to the securities market and the same has been

admitted by the *Notices* in their respective replies. There is also no dispute that the above noted investment advisory services were provided against consideration. From the oral and written replies, it is observed that no document has been furnished to controvert the findings in the *Interim Order* that the *Notices* were providing investment advisory services and for which they had not obtained SEBI registration.

20. The defence that has been offered in this regard is that small amounts have been charged as fees from investors. However, in view of the fact that the *Notices* have collected an amount of INR 1.09 Crores during the period of their operation, the same cannot be said to be a small amount.
21. Another defence advanced by the *Notices* has been that they had started offering investment advisory services prior to the coming into force of the IA Regulations, 2013 when there were no restrictions on carrying out such activities or any mandate to get registered with SEBI and they were not aware about the notification of the IA Regulations, 2013 and the mandate thereunder requiring investment advisers to get registered with SEBI.
22. It is a cardinal principle of law that ignorance of the law is no excuse and same cannot be relied upon as a defence in any proceedings to avoid liability in case of breach of such law. Further, the IA Regulations, 2013 were notified by SEBI in the year 2013 and it came into force w.e.f. April 21, 2013. From such date, it was imperative for any person carrying out investment advisory activity to get registered with SEBI. The IA Regulations, 2013, as it stood when it was notified, had a transitional provision enabling persons carrying on investment advisory activities prior to the notification of the IA regulations, 2013, to seek registration with SEBI. The proviso to Regulation 3(1) of IA Regulations, 2013, as it stood

then, provided that such persons could continue to do investment advisory activity for a period of 6 months from the date of commencement of the IA Regulations, 2013 without obtaining SEBI Registration. It was further provided that in case such a person makes an application for registration before SEBI within the said six months, then they could continue with the investment advisory activity till the application is disposed of by SEBI.

23. I find that the *firm* was incorporated in July 2014 and the *Notices* started receiving funds for Investment Advisory Services in the bank accounts of the *firm* from September 2014. Therefore, the facts of the case don't support the submission of the *Notices* that they had started investment advisory services prior to the IA Regulations, 2013 coming into force. In view of this, it was imperative for the *Notices* to obtain registration as Investment Advisor under the IA Regulations, 2013 prior to starting their investment advisory services if they had any intention of starting the investment advisory activities after coming into force of the IA regulations, 2013. However, I note that the *Notices* continued receiving funds during the whole period i.e. from September 2014 to November 2020 without making any attempt to apply for registration and it was only after passing of the *Interim Order* that the *Notices* stopped their operations as unregistered investment advisors. In view of the same, I do not find any merit in the contentions advanced by the *Notices*.
24. I find it important to mention here that the IA Regulations, 2013 were notified by SEBI in furtherance of its statutory mandate under Section 11 of the SEBI Act to protect the interest of investors in the securities market. Mandatory registration requirement under the IA Regulations, 2013 is an important safeguard put in place by SEBI to ensure that only registered entities, satisfying the qualification

criteria and conducting business in accordance with the IA Regulations, 2013 are engaged in providing advisory services to the investors. Registration ensures that a registered Investment Advisor will carry out its activities in compliance with the terms and conditions of the certificate of registration and by fulfilling the prudential norms, risk profiling measures, disclosure and other requirements mandated under the Regulations.

25. From the aforesaid, I note that the *firm*, which is a partnership firm, was engaged in providing investment advisory services for consideration without obtaining mandatory registration from SEBI which was in contravention of the provisions of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.
26. In order to ensure the protection of investors who receive investment advice, it is imperative that any person carrying out investment advisory activities should be competent enough to deal with investors' monies and SEBI as a regulator, has made it mandatory for anyone offering Investment Advisory services, to first obtain registration after acquiring the relevant qualification, as prescribed by SEBI, and such person has to conduct its activities in accordance with the provisions of the relevant SEBI Regulations.
27. In my view, unregistered investment advisors like the *Notices* in the present case can put the interest of the common investors at great risk by misleading them or misutilising their funds to the detriment of the interest of such investors as well as others in the securities market. In the present case, the *Notices*, on the aforementioned websites have, *inter alia*, mentioned that M/s. Always Gain Advisory Services offers advice in stocks, futures and options (F&O), as well as commodity derivatives. The *Notices* on their websites have further presented the

firm to be one of the leading stock market advisory service companies as well as ‘*the best MCX Commodity Market Advisory Service at Tamil Nadu*’. The *firm* has also claimed to have topped the ranks with its stock tips in all the segments it provides advice to the investors. The *firm*’s vision is stated to provide more than 85-90% success ratio in the stock market, based on Fundamental and Technical Analysis.

28. I find it relevant to mention here that unregistered investment advisory services are a menace to the securities market and SEBI has been fighting hard to curb this evil since long. In that direction, SEBI has also enacted IA Regulations, 2013 and has been conducting investment awareness seminars throughout the country alerting the public about the mushrooming growth of unregistered investment advisors. Curbing this breed of unregistered investment advisors is a necessity to make the securities market more reliable for retail investors so that they get an opportunity to approach the persons who are qualified and eligible to give such kind of advisory service to them. Permitting the investors to receive an investment advisory service from an unregistered entity, in effect means, the same is received from an unqualified person without following the safeguards prescribed in the IA Regulations, 2013. An investor receiving a service from an unregistered investment advisor stands at a disadvantageous position in respect of his protection as an investor, as envisaged under the IA regulations, 2013 *vis-a-vis* an investor who receives such service from a registered investment adviser in consonance with the IA Regulations, 2013. An unregistered investment adviser is a person who has not satisfied the Regulator that he is a fit and proper person to hold the certificate of registration as an investment adviser. Availing of service from such persons is detrimental to the interest of investors and such unqualified advisory services would result in irreparable damage, as the investors’ money is invested based on advice given by an unqualified and unregulated entity. Exposing

investors to such unauthorized and unregulated services also has the effect of interfering with the development of the securities market, as victims of such services, as well as their close ones, also tend to lose faith in the securities market. Such an injury/detriment to the development of the securities market also qualifies as an “irreparable injury”. The objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also orderly development of the securities market. Therefore, the investment advisory services should only be allowed to be dispensed by persons who are deemed fit under the IA Regulations, 2013 after following the safeguards mentioned therein.

29. 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 an investment advisor. The *Notices* were also promising “90-95% accuracy in our recommendation” to their prospective clients’ with promising profit ‘*whatever the market condition*’ knowing fully well that every investment in the securities market is subject to market risks and the said investment made by the client can also run into losses. Thus, the claims/representations made by the *Notices* through their two aforesaid websites viz. www.alwaysgain.com and www.alwaysgain.in were blatantly misleading and were made only to allure the investors to avail their unauthorized investment advisory services. The *Notices* have knowingly misrepresented on their website that they are well versed in derivatives as well as with commodities. The *Notices* offered the investment advisory services to investors through various plans floated on their aforementioned websites in an illegal manner, with the objective of raising money from the investors by way of subscriptions to such plans.

30. 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, I find from the Interim Order that the *Notices* have received total credits worth of INR 1.09 crores (INR 1,09,27,292/-) in their ICICI Bank Account and Axis Bank Account, both belonging to M/s Always Gain Advisory Service, either directly through account transfer of funds or through various other payment mediums such as CC Avenue. I also find that these account numbers were also published on the abovementioned two websites being run by the *Notices* in order to enable the investors to make payment to the *Notices*.
31. Further, in view of the failure of the *Notices* to provide satisfactory information related to the nature of the transactions reflected in the bank accounts mentioned above, and taking into account the packages/fees listed out for various types of services on their websites coupled with the credit entries from the bank accounts statements as detailed in the preceding paragraphs, I am constrained to hold that the amounts as alleged in the *Interim Order* are nothing but the amounts received by the *Notices* by rendering unauthorised investment advisory services. Accordingly, the sum total of all the transactions/credit entries aggregating to INR 1,09,27,292/- found in the bank accounts are held to have been paid by the clients into the accounts of *Notices* through different channels in lieu of subscription to investment advisory services.
32. I note that *Notices no. 2 to 4* were partners of the *firm* at some point of time during the period of its operation wherein majority of the time *Notices no. 2 and 3* were the partners and *Noticee no. 4*, wife of *Noticee no. 2*, joined the *firm* in April 2019 when *Noticee no. 3* was about to retire from the *firm*. In terms of Section 25 of the

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*”. As noted in the preceding paragraphs, credit transactions in the bank accounts of the *firm* pertaining to rendering investment advisory services were observed during the period September 8, 2014, to November 23, 2020. In view of the same, the aforesaid partners of Always Gain Advisory Service, are jointly and severally liable for the activities of the *firm* during their respective terms as partners.

ORDER –

33. In view of the foregoing discussions and 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, and 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, while disposing of the allegations levelled in the *Interim Order* cum SCN hereby direct the following:
- 33.1. 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;
- 33.2. The *Notices* shall issue a 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 their contact person such as names, addresses and contact details, within 15 days of coming into force of this Order;

- 33.3. 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;
- 33.4. 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 December 09, 2020.
- 33.5. 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 the date of this Order.
- 33.6. 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 paragraph 33.4 shall cease to operate once the refund to the investors is complete and the report as contemplated herein is filed;

- 33.7. The *Notices* are debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 06 (six) months from the date of this Order or till the expiry of 06 (six) months from the date of completion of refunds to investors as directed in paragraph 33.1 above, whichever is later;
- 33.8. 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 06 (six) months from the date of this Order or till the expiry of 06 (six) months from the date of completion of refunds to investors as directed in paragraph 33.6 above, whichever is later;
- 33.9. The *Notices* shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraphs 33.7 and 33.8 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 Laws.
- 33.10. The *Notices* shall not 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 paragraph 33.1 above.
- 33.11. The *Notices* shall not 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 paragraph 33.1 and until the refund is

completed and a report as mandated under sub-paragraph 33.6 is filed with SEBI.

34. The direction for refund, as given in paragraph 33.1 above, does not preclude the clients/investors of Always Gain Advisory Services from pursuing the other legal remedies available under any other law, against the *Notices* for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.
35. This Order shall come into force with immediate effect.
36. 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 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.
37. 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/-

Place: Mumbai

S. K. MOHANTY

Date: March 28, 2022

WHOLE TIME MEMBER