

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

FINAL ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

IN RESPECT OF

Serial No.	Name of Entity	PAN
1.	Eprofitzone Fincap Consultant Private Limited	AAECE4442M
2.	Mr. Prakash Kumar	BVRPK8681G
3.	Mr. Ajit Kumar	DBVPK6391D

Background

- The present proceedings emanate from an *ex-parte ad-interim* order dated December 07, 2020 (hereinafter referred to as “**Interim Order**”) passed by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against Eprofitzone Fincap Consultant Private Limited (hereinafter referred to as “**the Company**”) and its directors Mr. Prakash Kumar and Mr. Ajit Kumar (hereinafter collectively referred to as “**the Noticees**”). The *Interim Order* was passed by SEBI pursuant to receipt of a compliant on the basis of which it was *prima facie* observed that the *Noticees* were engaged in providing investment advisory services without obtaining a certificate of registration from SEBI and also are promising assured returns to the investors, 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**”)

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

- a. SEBI received a complaint dated October 01, 2018, from Mr. Devendar Kumar Agarwal (hereinafter referred to as the “complainant”), *inter alia*, alleging that he gave INR 7.45 lakhs to the company for share trading for which the company assured a him profit of INR 1.5 lakh per month. It was also alleged that after the money transfer the company is neither replying nor providing any records for the payment made.
- b. The company nor its directors were registered with SEBI in any capacity during the Investigation Period.
- c. The *Notices* were operating a website under domain name -/www.eprofitzone.in/ wherein the various schemes that were offered were advertised, the prices/fees charged listed out and along with the details of the company’s bank accounts with Axis Bank and ICICI Bank and a link to the payment gateway (PayUMoney) for making payments for availing the services.
- d. From the bank accounts of the firm and the statement of the payment link(PayUMoney) for the period December 05, 2016, to November 10, 2020, it was noted that 2321 credit transactions amounting to INR 3,35,13,232 /- were observed in relation to the investment advisory activities carried on by the firm.

3. Accordingly, in order to restrain the firm from continuing to act as an unregistered investment advisor, to prevent the *Notices* from further mobilising funds from the public and to prevent the diversion of money already collected by them from investors, it was

thought fit and proper to issue the following directions against the *Notices vide* the aforesaid *Interim Order*:

“40.1. Eprofitzone (PAN: AAECE4442M) and its Directors, Mr. Ajit Kumar (PAN: DBVPK6391D) and Mr. Prakash Kumar (PAN: BVRPK8681G), are directed to:

40.1.1. 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.

40.1.2. Not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.

40.1.3. 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.

40.1.4. 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.

40.1.5. Not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.

40.1.6. 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.

40.1.7. 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.”

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 and, thereby, their advisory activity be not treated as unregistered advisory activities and appropriate directions, under Sections 11(1), 11B and 11D of the SEBI Act and relevant SEBI Regulations including directions to continue the prohibition on them from buying, selling or otherwise dealing in the securities market, either directly or indirectly, in any manner whatsoever, for a particular period or any direction under Sections 11(1) and 11B of SEBI Act to refund the amount collected from the investors/clients be not issued against them.
5. I note from the records that the *Interim Order* was served on the *Notices* and in response to the same, the *Notices* have submitted their reply vide letter dated December 15, 2020. Thereafter, in order to ensure due compliance with the principles of natural justice and to accord fair opportunity to them to defend the charges levelled against them in the *Interim Order*, an opportunity of personal hearing was granted to the *Notices* on November 29, 2021, during which Ms. Dhanashree V, Advocate, appeared on behalf of the *Notices*, and presented her arguments via videoconferencing.
6. The summary of the oral and written submissions made by and on behalf of the *Notices* is given below,-
 - i. The *Notices* have denied the claim made by the complainant that he had invested INR 7.45 lakhs and that they had assured him profits of INR 1.5 lakhs per quarter. It was submitted that the amount received from the complainant did not exceed INR. 30,000/-, which was made by him towards availing the service "Stock Future".
 - ii. It is also submitted that the *Notices* had not sought SEBI registration at the time when the Company started operations in 2017, as it was not satisfying the networth requirement specified under the IA Regulations. Thereafter, the *Notices* have been

unable to get registered with SEBI due to lack of adequate support staff on account of the COVID-19 outbreak and some unavoidable personal engagements of one of the directors.

- iii. The *Notices* also submitted that the activities of the company have been carried out in a *bonafide* manner and the Company has been regular in making GST payments.
- iv. It is further submitted that immediately on receipt of the *Interim Order*, the *Notices* have initiated the process of obtaining SEBI registration.
- v. It is also submitted that even if the Company had engaged in carrying out unregistered activities, the directors cannot be personally held accountable for the same.

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 this proceedings is whether the *Notices* have acted as an unregistered investment adviser in violation of the provisions of the SEBI Act, 1992 and the IA Regulations.
- 8. Before moving forward to address this issue, it will be appropriate to refer to the relevant provisions of the SEBI Act and IA Regulations 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:

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:

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. As stated earlier, the present proceedings emanate from a complaint received by SEBI alleging that the *Noticees* were providing investment advisory services and promising assured returns. Pursuant to the same, SEBI conducted an examination wherein it was *prima facie* observed that the *Noticees* were engaged in providing investment advisory services for monetary consideration in an unauthorised manner and as stated earlier, in order to prevent further loss to the investors and to protect the integrity of the securities market, it was found necessary to pass an *interim order* restraining the *Noticees* from carrying out these unauthorised investment advisory activities.
10. It is noted from the records that *Noticee No. 1* was incorporated on October 04, 2016, with its registered office at ICS Square, No. 57, Ground Floor, 8th Main, 3rd Phase, Near State Bank of India, JP Nagar, Bangalore - 560 078. *Noticee Nos. 2 and 3* were the directors of the company and also held 50% each of the equity share capital of *Noticee No. 1*. The website

hosted by the Noticees –<https://www.eprofitzone.in/> was scrutinised by SEBI and it was observed that the following claims were made on the said website,-

- i. *Eprofitzone Fincap gives you the best exchanging solution in Intra Day and additionally positional i.e. Stock Cash, Stock Futures, Commodities including Bullions, Energy, Base Metal. We are the best securities exchange advisory firms as far as exactness and Profit edge.*
- ii. *eProfit Zone Fincap top goes for furnishing administrations as per the solace level of all brokers and speculators in securities exchange running from Small Investors to High Net worth Investors who exchange tremendous space of shares.*
- iii. *We give Stock Recommendation survive SMS. We likewise give premium call administration to HNI. Our SMS office is an exceptionally proficient and ensuring moment conveyance of Message with no loss of time. The customers get enough time to go into the exchange and book the benefit.*

11. The sample description of one of the services (“Stock Cash”) being offered as advertised on the website was as under:

STOCK CASH

The Stock Cash service is basically designed for the traders dealing in NSE stock cash. We provide traders with stock cash trading calls with high accuracy tips which will always lead a trader to handsome profit on their investment. Stock Cash is the most preferred trading instrument for most of the traders in India, thanks to its simplicity in understanding. This Service consist:

12. The price charged by the Noticees for of various kinds/items of services offered by the company as per its website were as under:

Service Name	Half yearly (Rs.)	Monthly (Rs.)	Quarterly (Rs.)	Yearly (Rs.)
Agri Commodity	38,800	12,800	26,800	50,800
Base Metal	36,800	11,800	28,800	46,800
BTST/STBT	25,000	-	15,000	40,000
Bullion	45,800	15,800	30,800	60,800
Delivery	20,000	-	10,000	30,000
Energy	36,800	15,800	28,800	46,800

Service Name	Half yearly (Rs.)	Monthly (Rs.)	Quarterly (Rs.)	Yearly (Rs.)
Exclusive Pack	3,00,000	50,000	1,20,000	-
HNI	3,00,000	60,000	1,50,000	-
Index Futures	36,800	11,800	28,800	46,800
Index Options	40,800	10,800	25,800	50,800
Nifty Futures	25,000	-	15,000	40,000
Premium Pack	1,00,000	30,000	75,000	1,75,000
Stock Cash	38,800	13,800	25,800	48,800
Stock Futures	48,800	15,800	30,800	68,800
Stock Options	40,800	10,800	25,800	50,800

13. In this respect, it is noted that the IA regulations 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 can therefore be noted from the definition of ‘investment adviser’ that any person who provides ‘investment advice’ for a consideration comes within its ambit. As already stated

in the preceding paragraphs, the website of the firm had clearly listed out the fees being charged for the various types of investment advisory packages being offered by the *Notices*. It was further provided on the firm's website that payments can be made to the firm's bank accounts maintained with ICICI Bank (A/c. No. 232205000541) and Axis Bank (A/c No. 916020084763543), and also through the payment gateway –PayUMoney. It is noted from the Account Opening Form/ KYC of the account opened with Axis Bank that the 'Nature of Business' has been mentioned by the *Notices* (for *Notice No. 1*) as 'Service Provider', while the 'Customer Business Detail' has been mentioned as 'Investment Consultant Services'.

15. As stated earlier, it was alleged in the complaint received by SEBI that the complainant had paid INR 7.5 lakhs to the *Notices* for stock trading and was promised an assured return of INR 1.5 lakhs per month. I note from the replies filed by the *Notices* that they have only disputed the amount alleged in the complaint and stated that the complainant paid only around INR 30,000 for availing the service "Stock Future". I, therefore, note that the *Notices* have admitted having received money from the complainant for providing investment advisory services and only the quantum of money received is being disputed. I further note that a copy of the customer data of *Notice No. 1* was annexed with their reply, from which it can be noted that they had received amounts ranging from INR 2,500 to INR 1,11,111 for offering various kinds of investment advisory services like "Stock Future" "Stock Option" "Stock Cash".

16. It can, therefore, be noted from the above, especially from the reply of the *Notices*, that in the present matter that there is no dispute regarding the fact that the *Notices* were engaged in providing investment advisory services to the public against consideration. The defence adopted by the *Notices* that they could not obtain SEBI registration due to not meeting the

networth requirement and also because of being tied up for various personal reasons does not have any merit.

17. The IA Regulations were notified by SEBI in the year 2013 and they come 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. If the *Notices* had any intention of carrying on investment advisory activity, then it was obligatory for them to seek registration from SEBI. The networth requirement has been specified to ensure that only adequately capitalised persons engage in such regulated activities which involve dealing with the funds of the common investors.
18. Mandatory registration requirement under the IA Regulations 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, 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.
19. From the aforesaid, I note that *Noticee No.1*, was engaged in providing investment advisory services for monetary consideration, and consequently was operating in contravention of the provisions of Regulation 3(1) of the IA Regulations. I also note that *Noticee Nos. 2 and 3*, were not only the directors of *Noticee No. 1* but also between them held the entire equity shareholding of the company. It is noted from the replies that they were aware of the registration requirement under the IA Regulations but chose not to register for the reasons stated therein. The liability of the directors arises in such situations if the contravention is attributable to them or was under their direction or control. In view of the same, I am of

the view that the contraventions of the company in the present matter can be attributed to *Notices Nos. 2 and 3*, who were the directors during the period covered under this order.

20. 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. However, the *Interim Order* records that the *Notices* have received credits worth INR 3.35 crores (INR 3,35,13,232/-), in their bank accounts maintained with ICICI Bank and Axis Bank, and also through the payment gateway PayUMoney. The account numbers and link to the payment gateway were also published on their website to enable the investors to make payment to the *Notices*.

21. In view of the foregoing discussions and definitive findings about the unauthorised activities engaged in by the *Notices* in rendering investment advisory services without obtaining registration with SEBI, I, in exercise of the powers conferred upon me in terms of 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 :

- i. The *Notices* shall within a period of three months from the date of this Order, refund the money received from its clients/investors as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;
- ii. *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 persons such as names, addresses and contact details, within 15 days of coming into force of this Order;
- iii. The repayments to the clients 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. *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 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, as directed in this Order, from the bank account of the *Notices*, wherein debit has been frozen by virtue of *Interim Order* dated December 07, 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, SEBI- Southern Regional Office(SRO), Overseas Towers, 7th Floor, 756-L, Anna Salai, Chennai – 600002, 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, SEBI- Southern Regional Office (SRO), Overseas Towers, 7th Floor, 756-L, Anna Salai, Chennai – 600002, 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 *Noticee no. 2* and the *Noticee no. 3* are 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;

- 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); and
 - 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.
22. The direction for refund, as given in paragraph 21(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.
23. This Order shall come into force with immediate effect.
24. 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.

25. 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.

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DATE: MAY 27, 2022

PLACE: Mumbai

**S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**