

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/53412	Date: August 24, 2022
Circular Ref. No: 107/2022	

To All NSE Members

Sub: Final Order in the matter of Gold Tree – Prop. Sarvesh Kumar

SEBI vide its Order no. WTM/AB/SRO/SRO/18443/2022-23 dated August 24, 2022, has hereby debarred below entity from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities, directly or indirectly in any manner whatsoever, for a period of 6 months from the date of this order or till the expiry of 6 months from the date of completion of refunds to complainants/ investors as directed in para 26.1 of SEBI Order, whichever is later;

Sr. No.	Name of the Entity	PAN
1	Mr. Sarvesh Kumar, Prop. M/s. Gold Tree	BRHPK7160G

This Order shall come into force with immediate effect.

The detailed order is available on SEBI website (<http://www.sebi.gov.in>).

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page under “Home-Regulation-Members-Debarred Entities”.

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Rishabh Goyal (Extension: 25508), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

National Stock Exchange of India

For and on behalf of

National Stock Exchange of India Limited

**Anand Jangir
Manager**

Annexure: - Final Order in the matter of Gold Tree – Prop. Sarvesh Kumar

WTM/AB/SRO/SRO/18443/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

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

In respect of:

Noticee no.	Noticee Name	PAN
1	Mr. Sarvesh Kumar, Prop. M/s. Gold Tree	BRHPK7160G

In the matter of Unregistered Investment Advisory and Unregistered Portfolio Management Services by Mr. Sarvesh Kumar, Prop. of M/s. Gold Tree.

1. SEBI received a complaint on November 27, 2018 from V.N. Holalkeri on behalf of Mrs. Saroja Venkatesh alleging that the complainant lost money by investing in the Portfolio Management Service (**‘PMS’**) scheme, offered by Mr. Sarvesh Kumar proprietor of M/s. Gold Tree, (hereinafter referred to as **“the Noticee”**). On the basis of this complaint, Securities and Exchange Board of India (hereinafter referred to as **“SEBI”**) conducted an examination into the affairs of the Noticee and found that the Noticee is running an unregistered investment advisory and unregistered PMS. Accordingly, a show cause notice dated August 18, 2021 (hereinafter referred to as **“the SCN”**), came to be issued to the Noticee, calling upon him to show cause as to why he should not be held liable for violation of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **“SEBI Act, 1992”**), Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as **“IA Regulations”**) read with Regulation 2(1)(l) and 2(m) of IA Regulations and Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as **“PMS Regulations, 1993”**) (*since repealed*) read with Regulation 2(ag), 2(ca) and 2(cb) of PMS Regulations. For the aforesaid violations the Noticee has been called upon as to why suitable directions including refund of fees collected, debarment, non-

association with listed entities, intermediaries, etc., should not be issued against him under Sections 11B and 11(4) of the SEBI Act, 1992.

2. I note that the SCN contained the following findings with regard to SEBI's examination of the Noticee's activities:

2.1. It is observed that the Noticee has provided investment advice through the website <http://www.goldtree.in>. The said website is not functional as on March 06, 2020. The following are observed from the archives of the website:

“

2.1.1.GOLD TREE is an Investment Advisory Company which basically provides recommendations for Stocks- Cash and F&O traded in NSE & BSE, commodities including bullions, metals and agro-commodities traded in MCX, NCDEX.

2.1.2.If you are looking for an accurate Intraday Equity/Share Tips, then you have come to the right place, we offer stock tips in various segments in the market like Stock Cash, Stock Future, Nifty Future, MCX Pack, Agri Pack, NCDEX, FOREX, etc.

2.1.3.Our vision is to provide our clients with wide-ranging, secured and finest financial solutions to achieve sustained growth. We aim to do this by being responsive towards our clients and strive relentlessly to improve.

2.1.4.We provide stock intraday tips for intraday day traders with proper target & Stop loss. We provide you calls on the in-depth analysis using technical & fundamental analysis by using SMS system this system delivers the calls to you instantly.

2.1.5.We provide intraday tips for intraday day traders with high return as compare to regular pack with proper target & Stop loss , In this service we generate calls in scripts in which bigger movement is expected in intraday.

2.1.6.In HNI package we provide intraday tips for intraday day traders with high return as compare to premium pack with proper target & Stop loss. In HNI package we provide blue chip script calls with telephonic support as well we provide Research Desk connectivity this service will be fully customized.

2.2. The packages offered by the Noticee, as mentioned on the aforesaid website of the Noticee, are as under:

Price of various packs in Rs.			
Segment	Quarterly	Half Yearly	Yearly
Stock Cash	30,250	50,250	90,750
Stock Future	30,250	50,250	90,750

Nifty Futures	25,000	40,000	70,000
Futures and Options	30,250	50,250	90,750
Equity Combo	40,000	70,000	1,20,000
Bullions	30,250	50,250	90,750
Base Metals	21,250	35,000	55,000
Energy	21,250	35,000	55,000
Agri	21,250	35,000	55,000
Commodity Combo	40,000	70,000	1,20,000
HNI Pack	Price on request	Price on request	Price on request
Investor Pack	Price on request	Price on request	Price on request
ROI Pack	Price on request	Price on request	Price on request
Ultra Series Pack	50,000	90,000	1,50,000
Portfolio Management	Price on request	Price on request	Price on request

- 2.3. From the database available on SEBI website, the Noticee was not registered with SEBI in any capacity.
- 2.4. From the archived copy of webpages, it is observed that the Noticee is having the accounts with State Bank of India, ICICI Bank and Axis Bank. It is observed that there are no transactions in ICICI bank account. The account details are given below:

Account Number & Bank	Account holder name & PAN	Address	Contact details
37741314057 - SBI	Gold Tree – Proprietor- Sarvesh (BRHPK7260G)	No. 29, 38th Main, Abhaiya Reddy Layout, Near Inchara Hotel, J P Nagar 6th Phase, Bengaluru - 560078	9986486156 Sarvesc1987 @gmail.com
004705500995 -ICICI Bank			
917020055977213 - Axis Bank			

- 2.5. As per the KYC documents of SBI and Axis bank accounts, the Noticee is the proprietor of M/s. Gold Tree and the authorized signatory of the said bank accounts. The Noticee is registered as enterprise with Ministry of Micro, Small & Medium Enterprises on April 6, 2018. The nature of business as per the Registration Certificate by the Ministry of MSME is “*Other financial service activities, except insurance and pension funding activities*”
- 2.6. A total of 616 credits were made from different sources into the SBI and Axis bank accounts since June 25, 2018 and the total credit received in the aforesaid accounts are Rs. 1,73,20,347.91. The summary of transactions observed in the aforesaid bank accounts are tabulated as under:

Account Number & Bank	Period for which bank statement is obtained	Total Credits (Rs.)	No. of Credit Transactions	Last Credit Transaction date	Closing Balance	Remarks	Annexure to the SCN
37741314057 SBIN0040007 SBI	25.06.2018 to 31.12.2020	1,55,61,845.16	523	14.10.2020	0	Total credit includes Rs. 1.56 lakh transferred by the complainant (refer para 14) towards PMS	Annexure 9
917020055977213 UTIB0003411 Axis Bank	08/08/2017 to 18/10/2019 (Account closed on 18/10/2019)	17,58,502.75	93	26.03.2019	0	-	Annexure 10
	Total	1,73,20,347.91	616				

2.7. It is observed from the numerous credit transactions that the large number of investors are affected.

2.8. It is observed from the above information available viz., web pages, bank transaction Statement of SBI and Axis bank, KYC submitted by SBI, Axis bank & ICICI bank that the Noticee has acted as an Investment Adviser by collecting fees from investors for advisory services without having certificate of Registration from SEBI.

2.9. The Complainant has stated that he had paid the money to the Noticee through NEFT. The transaction details are given below:

S.No.	Account Name & Mode	Date of transaction	Tfd from Bank A/c. No.	Tfd to Bank A/c. No.	Amount in Rs.
1	Gold Tree / NEFT	24/09/2018	YES bank - 046493700000411	State Bank of India - 37741314057	50,000
2		25/09/2018			5,500
3		28/09/2018			50,000
4		25/10/2018			30,000
5		31/10/2018			20,500
				Total	1,56,000

- 2.10. The complainant has also submitted the copy of the email dated January 17, 2019, received from teamgoldtree@gmail.com. The content of the said email is as under:

“Thank you for choosing GOLD TREE as you preferred your account details are below:

Client ID : KC02611806095

One of our company executive Mis. Deepika for portfolio. Your investment of 150000/- and profit till date 17/01/2019 is 268500/- and services charges you have paid for portfolio is 30500/- for the investment of 150000/- need to pay GST on 150000/- ie., 27000/-

Note: Your Profit Amount will be credited within 22/01/2019

Thanks & Regards

Team Gold Tree”

- 2.11. From the above, it is observed that the Noticee has managed the funds of the complainant which is akin to the activities of Portfolio Manager as per the Regulation 2(g), (n) and (o) of PMS Regulations, 1993.

3. I note that the Noticee was given 21 days’ time to file his reply to the SCN. The Noticee has filed his reply dated September 8, 2021 and reply sent by email dated October 8, 2021. Thereafter, on November 16, 2021, the matter was placed before me for granting a date of hearing in the matter. The Noticee was granted an opportunity of personal hearing on January 20, 2022, on which date, the Noticee appeared personally (through CISCO WebEX) and was heard.

4. On the basis of material available on record including copies of the screenshot of the website <http://www.goldtree.in>., the following claims made by Noticee were noted:

- 4.1 GOLD TREE is an Investment Advisory Company which basically provides recommendations for Stocks- Cash and F&O traded in NSE & BSE, commodities including bullions, metals and agro-commodities traded in MCX, NCDEX

- 4.2 If you are looking for an accurate Intraday Equity/Share Tips, then you have come to the right place, we offer stock tips in various segments in the market like Stock Cash, Stock Future, Nifty Future, MCX Pack, Agri Pack, NCDEX, FOREX, etc.
- 4.3 Our vision is to provide our clients with wide-ranging, secured and finest financial solutions to achieve sustained growth. We aim to do this by being responsive towards our clients and strive relentlessly to improve.
- 4.4 We provide stock intraday tips for intraday day traders with proper target & Stop loss. We provide you calls on the in-depth analysis using technical & fundamental analysis by using SMS system this system delivers the calls to you instantly
- 4.5 We provide intraday tips for intraday day traders with high return as compare to regular pack with proper target & Stop loss , In this service we generate calls in scripts in which bigger movement is expected in intraday.
- 4.6 In HNI package we provide intraday tips for intraday day traders with high return as compare to premium pack with proper target & Stop loss. In HNI package we provide blue chip script calls with telephonic support as well we provide Research Desk connectivity this service will be fully customized.
5. The aforesaid claims made by the Noticee, clearly demonstrate that Noticee has been holding himself out as an investment advisor and he has been offering his investment advisory services for a fees. From the archives of webpages, I find that the Noticee used to charge fees for his advisory services ranging from Rs. 30,250/- to Rs. 1,50,000/-.
6. I note that the following bank account nos. were mentioned on the website of the Noticee:

Account Number & Bank
37741314057 - SBI
004705500995 -ICICI Bank
917020055977213 - Axis Bank

7. From the Annexure 9 and 10 to the SCN i.e. copy of relevant credit transactions observed in AXIS bank A/c. and SBI A/c., I find that a total of 616 credits were made from different sources into the SBI and Axis bank accounts since June 25, 2018 and the total credit received in the aforesaid accounts are Rs. 1,73,20,347.91. I note that the Noticee has not disputed this observation made in the SCN.

8. On perusal of the contents of the email dated January 17, 2019, sent by Gold Tree from the email id teamgoldtree@gmail.com, to the complainant, I find that the Noticee was also running a PMS scheme.
9. I note that the Noticee has contended that he has not rendered any investment advisory services or PMS to any investor, and states that if at all SEBI has found any evidence, the same might have been undertaken by his employees, whose names are mentioned in his reply dated October 8, 2021. I do not find any merit in this contention by the Noticee, as the Noticee has not provided any corroborating evidence in support of his claim. I note that the Noticee has named five individuals, who he claims to be in his employment, however, there is not material on record to indicate that these individuals were indeed his employees. Notwithstanding this fact, even if it is presumed that the five individuals were his employees, as the employer, the Noticee cannot evade from the liability for acts done by his employees in the name of his proprietorship firm. More so when the evidence available on record in the form of screen shots of the website being ran by the Noticee and the bank statements of his SBI and Axis Bank accounts demonstrates receipt of fees in his accounts. I also note that M/s. Gold Tree is mentioned to be a proprietorship firm in the bank KYC documents and Udyog Aadhar. Therefore, assuming that the acts were committed by the employees, even than those acts were on behalf of the Noticee only and Noticee was the beneficiary of their acts.
10. I also note that the Noticee has submitted that he cannot present a successful defense to the SCN, because the Cyber Crime Police Station at Cyberabad has seized many of the Documents, Papers, Laptops and Mobile Phones, in criminal case bearing Crime No. 205 of 2019 dated November 2, 2019 and Crime No. 206 of 2019 dated October 15, 2019. I do not find any merit in this contention of the Noticee. I note that the SCN contained the following documents as Annexure in a CD.

Annexure No.	Details of Annexure	No. of PDF Pages
1	Copy of complaint from V N Holakeri dated 27.12.2018	12
2	Copy of Udyog Aadhar Registration Certificate	1

3	Printout of webpages of www.goldtree.in	42
4	Printout of transaction statement received from State Bank of India	77
5	Printout of transaction statement received from Axis Bank	11
6	Printout of KYC documents received from State Bank of India	19
7	Printout of KYC documents received from Axis Bank	22
8	Printout of KYC documents received from ICICI Bank	25
9	Print out of relevant credit transactions observed in the State Bank of India Account	25
10	Print out of relevant credit transactions observed in the Axis Bank Account	4
11	Copy of SEBI letter dated 14.11.2019 issued to you along with delivery status slip	4
12	Copy of email dated 17.01.2019 received from teamgoldtree@gmail.com by the complainant	1

11. From the list of the aforesaid documents, I find that all the relevant documents that have been relied upon by SEBI, while making the allegations, have been provided to the Noticee. I also find that while the Noticee claims that he is unable to present a credible defense due to seizure of documents by Cyber Crime Police, but the Noticee fails to mention as to unavailability of which specific document has prejudiced him in defending himself. The Noticee has baldly stated that ‘many documents, lap top and mobile phones’ are seized by the Cyber Crime Police, but no case has been made out by the Noticee to indicate that a specific document was required and in what context it was relevant for him to file the reply. I find that no prejudice has been caused to the Noticee in defending his case, rather the seizure of certain documents by the Cyber Crime Police is being used as an excuse by him to evade from the consequences of the present proceedings. Further, since the filing of the reply in October 2021, more than nine months have passed and the Noticee has filed no further reply, updating the status of ‘retrieval of the seized documents’ or updating the status of the attempts being made by him to retrieve the same.

12. From the aforesaid facts, I find that the Noticee was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products in lieu of consideration. Therefore, I find that in terms of Regulation 2(1)(I) of IA Regulations, the Noticee was providing “investment advice”. I note that if an entity is engaged in providing 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 in lieu of consideration, including entities which are holding themselves out as investment advisers, are covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations. As noted above, the Noticee has received Rs. 1,73,20,347.91. in the bank accounts mentioned on its website. The Noticee has been unable to prove that these funds were earned from other source of income. Hence, I find that these services were being offered by the Noticee in lieu of the consideration, as noted above. Therefore, I find that the Noticee was engaged in the business of providing investment advice to its clients, for consideration, and thus, acting as an investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations.

13. I also note that the Noticee was also engaged in undertaking management of portfolio of securities on behalf of his client, thus he acted as the ‘portfolio manager’ as defined in Regulation 2(cb) of PMS Regulations.

14. I also note that, it is imperative that any person carrying out investment advisory activities or portfolio management activity has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992 and Regulations framed thereunder.

15. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations:

- 15.1 An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 along with requisite non-refundable application fee;

15.2 The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:

15.2.1 A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognized foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

15.2.2 An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

15.2.3 Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

15.3 Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

16. I note that safeguards provided under IA Regulations, requires continued minimum professional qualification and net-worth requirement for investment adviser, including disclosure of all conflict of interest, prohibition on entering into transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client

based on client's objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc. These requirements are aimed at protection of investor interest.

17. I note that for seeking a certificate of registration for acting as a portfolio manager, an entity is required to satisfy *inter alia* the following requirements, as provided under PMS Regulations, 1993:

17.1. An application for seeking certificate of registration to be made to SEBI, in Form A as specified in the First Schedule to PMS Regulations, 1993 along with requisite non-refundable application fee;

17.2. The principal officer of the applicant portfolio manager shall be appropriately qualified/experienced with either of the following:

17.2.1. a professional qualification in finance, law, accountancy or business management from a university or an institution recognized by the Central Government or any State Government or a foreign university; or

17.2.2. an experience of at least ten years in related activities in the securities market including in a portfolio manager, stock broker or as a fund manager;

17.2.3. a CFA charter from the CFA Institute

17.3. The applicant portfolio manager shall not have networth of less than two crores rupees.

18. I note that the requirements stipulated in the PMS Regulations, 1993, for obtaining registration as portfolio manager, were aimed at protecting the interest of investors in the securities market.

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

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.*

20. As per Regulation 3(1) of IA Regulations, 2013 the registration of the investment advisers is mandatory. It provides that, *“On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations”*. It is noted that the Noticee was not registered with SEBI in the capacity of Investment Advisor. Hence, I find that these activities were being carried out by the Noticee without holding the certificate of registration as investment adviser and are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations.

21. As per Regulation 3 of PMS Regulations, 1993 (*since repealed*) the registration of the portfolio managers is mandatory. It provides that, *“No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations.”* It is noted that the Noticee was not registered with SEBI in the capacity of Portfolio Manager. Hence, I find that these activities were being carried out by the Noticee without holding the certificate of registration as portfolio manager and are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3 of the PMS Regulations, 1993 (*since repealed*).

22. I note that the Noticee has been found to be in violation of the provisions of the PMS Regulations, 1993 (*since repealed*). I note that the PMS Regulations, 1993 have been repealed by Regulation 42 of the PMS Regulations, 2020. Regulation 42(2)(a) of the PMS Regulations, 2020 provides that *“Notwithstanding such repeal, —(a) anything done or any action taken or purported to have been done or taken including registration or approval granted, fees collected, registration or approval, suspended or cancelled, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;”*

23. In this regard, it would be appropriate to refer to the judgment of Hon'ble Supreme Court of India in *Sahara Real Estate Corporation and Others Vs. SEBI & Ors.* (2013) 1 SCC1, wherein, it was held that:

“103. Repeal and Saving Clause under ICDR 2009 would clearly indicate that the violation under DIP Guidelines was a continuing one. Regulation 111 of ICDR reads as follows:

“Repeal and Savings

111. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded.

(2) Notwithstanding such rescission;

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer documents, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

104. Regulation 111(1) of ICDR 2009 rescinded the DIP Guidelines from 26.8.2009 and clause (2) of Regulation 111 contains the saving clause. The expression “anything done” or “any action taken” under Regulation 111(1) are of wide import and would take anything done by the company omitted to be done which they legally ought to have done. Non-performance of statutory obligations purposely or otherwise may also fall within the above mentioned expressions. Failure to take any action by SEBI under DIP Guidelines, in spite of the fact that Saharas did not discharge their statutory obligation, would not be a ground to contend that 2009 Regulations would not apply as also the saving clause. 2009 Regulations, in my view, will apply to all companies whether listed or unlisted. Further, in the instant case, SEBI was not informed of the issuance of securities by the Saharas while the DIP Guidelines were in force and Saharas continued to mobilize funds from the public which was nothing but continued violation which started when the DIP Guidelines were in force and also when they were replaced by 2009 Regulations. Further, it may also be recalled that any solicitation for subscription from public can be regulated only after complying with the requirements stipulated by SEBI, in fact, an amendment was made

to Schedule II of the Companies Act vide notification No. GSR 650(3) dated 17.9.2002 by inserting a declaration which has to be signed by the directors of the company filing the prospectus, which reads as under:

“That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the securities and Exchange Board of India Act, 1992 or rules made there-under or guidelines issued, as the case may be.”

24. I find that ratio of the aforesaid judgment of Hon'ble Supreme Court in Sahara case (supra) with respect to interpretation of repeal and saving clause of ICDR 2009 squarely applies to the facts of the present case. Therefore, violation of PMS Regulations, 1993 (*since repealed*) can be pursued under the corresponding provisions of the PMS Regulations, 2020.

25. As observed in the earlier part of this order, I note that, the Noticee has collected Rs. 1,73,20,347.91. in the bank accounts mentioned on his website, as referred in para 6 above.

Directions:

26. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(4) and 11B read with of Section 19 of the SEBI Act, 1992, hereby direct that:

26.1 The Noticee shall within a period of three months from the date coming into force of this order, refund the money received from any complainants/ investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities and unregistered portfolio manager activities;

- 26.2 The Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;
- 26.3 The repayments to the complainants/ investors shall be effected only through bank transfers, which ensures audit trails to identify the beneficiaries of repayments;
- 26.4 The Noticee is 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 from the bank accounts of the Noticee, only for the purpose of making refunds to the clients/ investors/ complainants who were availing the investment advisory services or portfolio manager activities from the Noticee;
- 26.5 After completing the aforesaid repayments, the Noticee shall file a report of such completion with SEBI addressed to the “Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, 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 the directions at para 26.1 above, duly certified by an independent Chartered Accountant and the direction at para 26.4 above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors, to the satisfaction of SEBI;
- 26.6 The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities, directly or indirectly in any manner whatsoever, for a period of 6 months from the date of this order or till the expiry of 6 months from the date

of completion of refunds to complainants/ investors as directed in para 26.1 above, whichever is later;

26.7 The Noticee shall not undertake, either during, or after, the expiry of the period of debarment /restraint as mentioned in para 26.6 above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

27. It is clarified that the direction for refund, as given in para 26.1 above, does not preclude the clients /investors to pursue the other legal remedies available to them under any other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

28. This order comes into force with immediate effect.

29. A copy of this order shall be sent to the Noticee, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/-

Date: August 24, 2022
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA