National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/53494	Date: August 29, 2022
Circular Ref. No: 117/2022	

To All NSE Members

Sub: **Final Order in the matter of Mr. Rajiv Yogeshkumar Rajput, Proprietor: Capital Gainers**

SEBI vide its order no. WTM/AB/WRO/WRO/18676/2022-23 dated August 29, 2022, has hereby debarred entity Mr. Rajiv Yogeshkumar Rajput, Proprietor: Capital Gainers – (PAN :-AMUPR1796G) 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 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 18(a) of SEBI Order, whichever is later.

The Order shall come into force with the 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-Action against Members-Regulatory Actions".

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. Abhishek Goenka (Extension: 23449), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of

National Stock Exchange of India

National Stock Exchange of India Limited

Anand Jangir
Manager

Annexure

Final Order in the matter of Mr. Rajiv Yogeshkumar Rajput, Proprietor: Capital Gainers

WTM/AB/WRO/WRO/18676/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Noticee	PAN
1.	Mr. Rajiv Yogeshkumar Rajput Proprietor: Capital Gainers	AMUPR1796G

In the matter of Unregistered Investment Adviser

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1. The present proceedings emanate from a show cause notice dated **August 05, 2021** (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against Shri Rajiv Yogeshkumar Rajput, in his capacity as the sole proprietor of Capital Gainers wherein it was *prima facie* found that the Noticee was engaged in investment advisory services without obtaining a certificate of registration from SEBI in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations, 2013**"). The SCN called upon the Noticee to show cause as to why suitable directions should not be issued against the Noticee under sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992.

2. I note that the SCN alleges the following:

i. SEBI, while examining an entity named Profit Sharing, which was carrying out unregistered investments advisory, observed that some of the funds had been transferred by Profit Sharing to another entity called Capital Gainers.

ii. Upon further examination, a website named www.capitalgainers.in was found, which was being operated to give investment advisory services.

iii. Details of the webpage was recovered from www.archive.org and it was noted that Shri. Rajiv Yogeshkumar Rajput was the proprietor of Capital Gainers and operating the said website.

iv. The website also mentioned three bank accounts which were in the name of Capital Gainers.

3. The SCN was issued to the addresses of the Noticee by Speed Post. The SCN was returned undelivered. In this regard, public notices were issued in Times Nation newspaper, Ahmedabad edition on September 14, 2021 and Khabar @ Gujarat newspaper on September 14, 2021. However, no reply was received from the Noticee. In order to comply with the principles of natural justice, the file was placed before me on December 22, 2021 for granting a hearing and a hearing was granted to the Noticee on February 02, 2022. On the said date the Noticee failed to appear, nor did he seek any adjournment to the hearing. In view of the same the hearing was concluded *qua* the Noticee.

Consideration of submissions and findings:

4. I have considered the allegations made in the SCN along with the findings of the examination by SEBI stated therein and material available on record.

5. In this regard, I note that the definition of Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013 provides as follows:

> "investment adviser means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;"

Further, Regulation 2(1)(l) of IA Regulations, 2013 states 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;"

6. I note that, the website, www.capitalgainers.in *inter alia* claimed as follows:

> "Capital Gainers is a research firm specializing and expertizing in providing recommendations to its customers in Indian stock and commodity markets.
>
> Specifically, in the Commodity Markets we provide recommendations in MCX. Capital Gainers will assist you to earn a lot without losing your hard earned money. We enjoy a great and strong reputation among our valued customers, investors, HNIs and our endeavor is to expand our area further for the upliftment of our investor at large through our recommendations/tips derived from our great vast experience and knowledge in the fields of investment.
> ….
> All our recommendations are through a detailed study of technical analysis, and fundamental analysis. Our sources are live data from the exchange and do the analysis on them. Each instrument is managed by a team of only expert analysts which is headed by a superior Lead Analyst.
> ……
> Dealing in Intraday Trading Calls and Short Term Calls and we Also Offer HNI Services for clients having high trading volumes. We provide Daily Trading Calls with more than 90% accuracy with proper follow ups of traders via Company SMS Server and telephonic support too for consistent profit booking."

7. From the above, I note that the website claimed that Capital Gainers enjoy a great and strong reputation among its valued customers, investors, HNIs and its endeavor was to expand its area further for the upliftment of its investor at large through its recommendations/tips derived from its great vast experience and knowledge in the fields of investment. I note that the website claimed as follows: *"We provide Daily Trading Calls with more than 90% accuracy with proper follow ups of traders via Company SMS Server and telephonic support too for consistent profit booking."* The fact that intraday calls and short term calls were being provided and follow ups were also being provided on the said calls by SMS and telephonic support implies that investment advice as defined under Regulation 2(1)(l) of IA Regulations, 2013 was being provided through the website. The website also mentioned various packages and their pricing which further gives an indication that the service provided through the website were in the nature of investment advice. I note that through the website

www.capitalgainers.in 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 was being rendered.

8. From the print out of the web pages of the website, as available on record, the details of a few subscription packages are reproduced below:

Equity	**1 month**	**3 month**	**6 month**	**12 month**
Stock Cash	10000	25000	40000	70000
Stock Future	15000	40000	70000	130000
Nifty and Bank Nifty	10000	25000	40000	70000
Call and Put	8000	20000	35000	60000
Delivery	8000	25000	40000	70000
Position Calls	8000	25000	40000	70000
HNI Stock Cash	15000	40000	70000	125000
HNI Future Stock	20000	50000	85000	150000
Combo	30000	80000	145000	260000
HNI Combo	40000	100000	180000	325000
MCX	**1 month**	**3 month**	**6 month**	**12 month**
Bullion	25000	64000	110000	190000
Base Metals	15000	40000	70000	120000
Energy	15000	40000	70000	120000
HNI Bullion	30000	80000	140000	250000
HNI Metals	20000	50000	80000	140000
HNI Energy	20000	50000	80000	140000
MCX Combo	30000	80000	140000	250000
MCX HNI Combo	40000	160000	200000	360000

I note that the Noticee has not contested above-mentioned details of the pricing of various services offered. The above mentioned packages clearly show that investment advice relating to buying, selling and dealing in securities was being provided through the website www.capitalgainers.in.

9. In the present matter, investment advisory services were being offered to clients through the website www.capitalgainers.in *in lieu* of consideration, which is clear from the pricing specified for the packages on the website and from the fact that the website provided bank account details for payment. Three bank account details were mentioned on the website:

   i) ICICI Bank account no. 002405022784 in the name of CAPITAL Gainers

   ii) HDFC Bank account no. 50200025058809 in the name of CAPITAL Gainers

   iii) Axis Bank account no. 917020036892621 in the name of CAPITAL Gainers

10. The KYC for opening account no. 917020036892621 with Axis Bank, as obtained from the said bank revealed a Certificate issued by Ahmedabad Municipal Corporation wherein the nature of business of Capital Gainers is mentioned as "Stock Advisory". In the said certificate Shri Rajiv Yogeshkumar Rajput is mentioned as the proprietor of Capital Gainers. Therefore, I find that Shri Rajiv Yogeshkumar Rajput was the entity behind the website www.capitalgainers.in and was rendering investment advice as defined under Regulation 2(1)(l) of IA Regulations, 2013 through the said website and reecived consideration *in lieu* of the investment advise given through the website www.capitalgainers.in and was running the website as the proprietor of Capital Gainers.

11. Further, the total amount collected in the three bank accounts mentioned on the website www.capitalgainers.in is as follows:

Bank	Amount received
ICICI Bank	Rs. 63,41,995/-
HDFC Bank	Rs. 12,82,068/-
Axis Bank	Rs.10,00,302/-

Total	Rs. 86,24,365/-

In the above accounts there are multiple credit transactions from various entities. Hence, it is inferred that the said bank accounts were used for receipt of fees from various entities for the purpose providing advisory services.

12. From the aforesaid facts, I find that Shri Rajiv Yogeshkumar Rajput, who is the proprietor of Capital Gainers, engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through its website, www.capitalgainers.in *in lieu* of consideration. 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, 2013. As noted above, the Noticee received Rs. 86,24,365/- in the bank accounts mentioned on their website for the investment advisory services provided by him. Hence, I find that the Noticee was engaged in the business of providing investment advice to its clients, for consideration, and thus, acting as investment advisers, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

13. I also note that, it is imperative that any person carrying out investment advisory activities must necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992 and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

> "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:"

14. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 has been

framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under regulation 3(1) of the IA Regulations, 2013, which, *inter alia*, provides that, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

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, 2013:

(i) 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 alongwith requisite non-refundable application fee;

(ii) 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:

a. 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 recognised 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;

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

c. 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.

(iii) 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. The activities engaged in by the Noticee, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticee was acting as an Investment Adviser, although the Noticee was not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticee without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act, 1992 read with regulation 3(1) of the IA Regulations, 2013.

17. The Noticee in the three bank accounts mentioned on its website www.capitalgainers.in, which were in the name of Capital Gainers, a proprietary

firm of Shri Rajiv Yogeshkumar Rajput had received Rs. 86,24,365/- from the date of opening of these accounts till May 2020 through unregistered investment advisory activities as observed above.

DIRECTIONS

18. 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:

a. The Noticee shall within a period of three months from the date of coming into force of this direction, jointly and severally, 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;

b. 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;

c. The repayments to the complainants/ 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;

d. The Noticee is prevented from selling assets, properties and holding of mutual funds/shares/securities held by him/it 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/ complainants who were availing the investment advisory services from the Noticee, as directed in this order, from the bank accounts of the Noticee;

e. After completing the aforesaid repayments, within a period of 15 days, the Noticee shall file a report of such completion with SEBI addressed to the Division Chief, CIS Division, Investment Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051, duly certified by an independent Chartered Accountant and the direction at para 18(d) above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors;

f. The Noticee is 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 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 18(a) above, whichever is later;

g. The Noticee shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 18(f) 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.

h. The direction for refund, as given in para 18(a) 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.

19. This order comes into force with immediate effect.

20. 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.

Date: August 29, 2022
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA