National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/53509	**Date: September 01, 2022**
Circular Ref. No: 118/2022	

To All NSE Members

Sub: **Final Order in the matter of Shri Piyush Shambharkar, Proprietor: The Profit Sharing**

SEBI vide its order no. WTM/AB/WRO/WRO/18810/2022-23 dated September 01, 2022, has hereby debarred below mentioned entities 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 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 22(a) of SEBI order, whichever is later.

Sr. No.	Name of the Entity	PAN
1	Shri Piyush Shambhakar (Proprietor: The Profit Sharing)	BOIPS7751H

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- 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. Abhishek Goenka (Extension: 23449), Mr. Atish Agarwal (Extension: 26026)
Direct No: 022-26598417/18 Fax: 022-26598195

India@75
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National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Atish Agarwal
Senior Manager

National Stock Exchange of India

Annexure

Final Order in the matter of Shri Piyush Shambharkar, Proprietor: The Profit Sharing

WTM/AB/WRO/WRO/18810/2022-23

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.	Shri Piyush Shambhakar Proprietor: The Profit Sharing	BOIPS7751H

In the matter of Unregistered Investment Adviser

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1. The present proceedings emanate from a show cause notice dated **July 27, 2021** (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against Shri Piyush Shambhakar, in his capacity as the sole proprietor of 'The Profit Sharing' 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 had received complaint dated May 24, 2019 from Mr. Israil Ajij Baig (hereinafter referred to as "**complainant**") against 'The Profit Sharing' (hereinafter referred to as "Profit Sharing") and proprietor Shri Piyush Shambhakar (Profit Sharing and Shri Piyush Shambhakar collectively referred to as the '**Noticees**'). The SCN alleged that Noticees were carrying out unregistered Investment Advisory services.

ii. Vide email dated May 24, 2019, the complainant had, *inter alia*, alleged that Profit Sharing is involved in Unauthorized Investment Advisory Services and the complainant has received tips from Profit Sharing due to which he has lost Rs. 2,44,000. The copy of the complaint dated May 24, 2019 was provided as an Annexure to the SCN.

iii. The website of Profit Sharing, www.theprofitsharing.com, was not active. The archive pages of the website were downloaded from web.archive.org which revealed that the website of the Profit Sharing disclosed that it was providing investment advisory services.

iv. The complaint dated May 24, 2019 which was annexed with the SCN, stated as follows:

- Complainant received a call from Mr. Bhavish Patel from Ahmedabad. Mr. Bhavish Patel offered that, he will provide trading tips wherein there will be 50% profit sharing between him and the complainant. The complainant started trading based on their tips and made Rs. 6000/- profit and transferred Rs. 3000/- to the account of Mr. Bhavish Patel. Subsequently, Mr. Bhavish Patel offered the complainant to take 2000 to 3000 bank nifty shares and stated that there will be bigger profit if he invests big amount. On that day the complainant made profit of Rs. 1,75,600/- and transferred Rs. 88,000/- to the account of Mr. Bhavish Patel. Mr. Bhavish Patel again asked the complainant to take 5000 shares and stated that there will be 100% profit. He didn't provide stop loss and the complainant incurred a loss of Rs. 2,44,000/-.
- Mr. Bhavish Patel informed the complainant that his company operates through the website www.theprofitsharing.com and is an

unregistered company for which SEBI Registration work is under process. Mr. Bhavish Patel asked the complainant to transfer Rs. 76000/- and stated that he will recover earlier losses.

- The Complainant stated that profit sharing did not do KYC and did not provide stop loss for trading and promised him 100% profit. He made a loss of 2,44,000/- and transferred 88,000/- and 76,000/- to Mr. Bhavish Patel representing Profit Sharing.
- The complainant alleged that he had received investment advisory services from the Noticees and made payments to the Noticees for providing the services. The complainant mentioned that he transferred money in a bank account with ICICI bank on the behest of Mr. Bhavish Patel. The complainant later found out that the said ICICI bank account belonged to Profit Sharing.

v. Payment made by the complainant could be traced in the ICICI bank account of the Profit Sharing. Further, from the bank account statements and the narration column of transactions at SBI account of Mr. Piyush Shambharkar, it was observed in the SCN that the money has been received in the bank account for the purpose of trading tip, fees, trade call fee, advisory charges, stock fee, investment. Hence, it was inferred that the said Bank account of Mr. Piyush Shambharkar and the bank account of Profit Sharing were used for receipt of fees from various entities for the purpose providing advisory services and that the person who called the complainant was acting on behalf of the Noticees.

3. The SCN could not be served on the addresses of the Noticees by Speed Post. Subsequently, the service of SCN to the Noticees was completed through publication in newspaper on September 22, 2021. The Noticees did not submit any reply to the SCN. The mater was placed before me for granting personal hearing on December 22, 2021. In order to comply with the principles of natural justice a hearing was granted to the Noticees on March 21, 2022. On the said date the Noticees failed to appear, nor did they seek any adjournment to the hearing. In view of the same the hearing was concluded *qua* the Noticees.

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 of the Noticees, www.theprofitsharing.com *inter alia* claimed as follows:

> *"*PROFIT SHARING, highly trusted name in Stock & Commodity tips services providing whole and entire Stock & Commodity advisory tips services under one umbrella. In India there are only few technical and research analysis, our team is one of them. Our highly skilled and experienced team providing as much higher profit possible in every Trade. We are providing the best advisory services in Stock & Commodity market and also with best Customer relationship committed to sustain for a very long time with the clients in market."

7. From the above, I note that the website www.theprofitsharing.com provided personalized stock & commodity investment advisory tips to its clients. The website claimed that Profit Sharing is a trusted name in the financial services arena and provided clients with the entire gamut of financial services under one umbrella. The website also mentioned various subscription packages.

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:

"Standard call service activation charges is Rs 5,500/-. In which sharing will be 60-40% between customer and company.
HNI calls service activation is s. 11,000/- and sharing ration will be 70%-30% between customer and company."

"Our Services:

Equity Services
a) Intraday Cash

In Intraday Cash service we provide best intraday tips for the traders trading in equity cash. ……

b) Stock Future

In Stock Future service we are providing the highest level of accuracy by deep down research and analysis by our highly experienced team so that clients can make most of profit they can from risky markets also. …….

c) Nifty & Bank Nifty Tips

Our company PROFIT SHARING providing the best NIFTY & BANK NIFTY Tips available in market. ………

d) BTST/STBT TIPS

In this service package we provide holding calls for the next trading session generating great profits to clients provided by only deep and long technical and fundamental analysis. ……………

9. Further, the following testimonial was also published on the homepage of its website:
"It is a very good experience working with Profit Sharng company. As per my investment i am getting calls with very strong proper entry and exit from market giving very good returns to me. – Shantanu Mukherjee"

10. In the present matter, investment advisory services were being offered through website www.theprofitsharing.com *in lieu* of consideration. Following bank accounts were mentioned on the website, www.profitsharing.com wherein investor could make payment of fees for availing the investment advisory service which were being offered through the said website:

HDFC Bank Account name: Profit Sharing Account no: 25342000000224 IFSC: HDFC0002534	Axis Bank Account name: Profit Sharing Account no: 914020001447297 IFSC: UTIB0001338	ICICI Bank Account name: Profit Sharing Account no: 034405500323 IFSC: ICIC0000344	State Bank of India Account name: Piyush Shambharkar Account no: 30209007790 IFSC: SBIN0003471

11. Further, from the KYC, Account opening form and account statements as provided by ICICI Bank, it is noted as under:

a. Profit Sharing is a proprietorship firm.

b. Shri Piyush Shambharkar was sole proprietor of Profit Sharing and the nature of business of Commodity and Stock Advisory.

c. A transaction made by the complainant for an amount of Rs. 76,000 to Profit Sharing on April 20, 2019, could be traced in the ICICI Bank Account statement (Account No. 034405500323, Transaction no: BIL/INFT/001690127985).

12. Further, from the analysis of account statements of the aforesaid bank accounts, it is noted as under:

a. In the HDFC Bank Account (Account Number: 25342000000224) Profit Sharing has received credit of Rs. 23,60,268 during the period December 23, 2013 to August 14, 2019.

b. In the Axis Bank Account (Account Number: 914020001447297) Profit Sharing has received credit of Rs. 3,340,536 during the period January 20, 2014 to August 21, 2019.

c. In the ICICI Bank Account (Account Number: 034405500323) Profit Sharing has received credit of Rs. 9,268,255 during the period June 24, 2014 to August 16, 2019.

d. In the State Bank of India Account (Account Number: 30209007790) Profit Sharing has received credit of Rs. 48,60,375 during the period May 21, 2014 to October 31, 2019.

13. Moreover, from the narration column of transactions at SBI Account it has been observed that, money has been received for the purpose of trading tip, fees, trade call fee, advisory charges, stock fee, investment etc. The summary of transactions in the SBI Bank Account were provided as an annexure to the SCN.

14. The total amount credited in aforesaid bank accounts, disclosed on the website of Profit Sharing, is Rs. 1,98,29,434/-. These bank accounts wherein consideration / advisory fees were paid, have multiple credit transactions from various entities having narrations like trading tip, fees, trade call fee, advisory charges, stock fee, investment. Hence, it is inferred that the said bank accounts were used for receipt of fees from various entities for the purpose providing advisory services through website www.theprofitsharing.com.

15. From the aforesaid facts, I note that the website was providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and the said advice was specific to the clients. Therefore, I find that Shri Piyush Shambharkar, who is the proprietor of Profit Sharing, engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through its website www.theprofitsharing.com *in lieu* of consideration. From the discussion above, I find that the Noticees were giving investment advise, as defined in Regulation 2(1)(l) of IA Regulations, 2013.

16. 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, will be covered by the definition of "Investment Adviser" as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, the Noticees received total Rs. 1,98,29,434/- in their bank accounts mentioned on their website for the investment advisory services provided by them. Hence, I find that the Noticees were engaged in the business of providing investment advice to their clients, for consideration, and thus, acting as investment adviser/s, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

17. 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:"*

18. 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.

19. 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.

20. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that although the Noticees were acting as an Investment Adviser, however, the Noticees were not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticees 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.

21. The Noticees in their bank accounts as mentioned in paragraph 12 above had received a total amount of Rs. 1,98,29,434/-. during the period from December 23, 2013 to October 31, 2019 through unregistered investment advisory activities as observed above.

<u>DIRECTIONS</u>

22. 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 21 of the SEBI Act, 1992, hereby direct that:

a. The Noticees shall within a period of three months from the date 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 Noticees 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 Noticees 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/ complainants who were availing the investment advisory services from the Noticees, as directed in this order, from the bank accounts of the Noticees;

e. After completing the aforesaid repayments, within a period of 15 days, the Noticees shall file a report of such completion with SEBI addressed to the Division Chief, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, Investment Management Department, SEBI Bhavan II, Plot No. C7 G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, duly certified by an independent Chartered Accountant and the direction at para 22(d) above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors;

f. The Noticees 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 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 22(a) above, whichever is later;

g. The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 22(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 22(a) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

23. This order comes into force with immediate effect.

24. A copy of this order shall be sent to the Noticees, 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: September 01, 2022 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA