National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53638	**Date: September 09, 2022**
Circular Ref. No: 125/2022	

To All NSE Members,

Sub: **Final Order in the matter of Shri Prabhu**

SEBI vide its Order No. WTM/AB/SRO/SRO/18997/2022-23 dated September 09, 2022, has hereby debarred below entity from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of six (6) months from the date of the Order or till the expiry of six (6) months from the date of completion of refunds to complainants/ investors as directed in para 24 (a) of the Order, whichever is later.

Sr no.	Details of Entity	PAN
1	Shri Prabhu S/o Thillai Nadarajan 3/706, Sagul Hamithu Street, Near Temple, Paramakudi- 623707	Not available

The 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-Action against Members-Regulatory Actions”.

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

National Stock Exchange of India

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

Mr. Rohit Swami (Extension:23023), Mr. Anand Jangir (Extension:22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

ANNEXURE: Final Order in the matter of Shri Prabhu

WTM/AB/SRO/SRO/18997/2022-23

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 Prabhu S/o Thillai Nadarajan 3/706, Sagul Hamithu Street, Near Temple, Paramakudi- 623707	Not Available

In the matter of Unregistered Investment Adviser

(The aforesaid entity is hereinafter referred to by his name or as "the Noticee".)

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1. The present proceedings emanate from a show cause notice dated **September 09, 2021** (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against Shri Prabhu (hereinafter referred to as "the Noticee"), wherein it was *prima facie* found that the Noticee has acted as Investment Adviser by collecting fees from investors for 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 vide email dated August 29, 2019 and letter dated July 01, 2019 from one "**complainant**". Vide email dated August 29, 2019, the complainant had, *inter alia*, alleged that www.niftyandbanknifty.com is involved in Unauthorized Investment Advisory Services and the complainant has received tips through SMS from www.niftyandbanknifty.com due to which he has lost Rs. 15,000/-. The copy of the complaint dated August 29, 2019 was provided as an Annexure to the SCN.

ii. The complaint dated August 29, 2019 and letter dated July 01, 2019, which was annexed with the SCN, stated as follows:
   - The complainant had received a SMS related to option trading from an entity functioning under the name "Nifty and banknifty" wherein very high profits were promised on every day trading. The complainant enquired about the said message and received a call from some person who stated that the complainant can earn lakhs of rupees in profit on a capital of Rs 30,000/-. The complainant received messages every day with Nifty option tips and the messages stated that the clients are making huge profits due to these trades. The complainant was also told that he has to pay Rs 6000/- for one month service charge.
   - The complainant paid Rs. 6000/- and started receiving Bank Nifty and Nifty option calls on which he lost 15000/-. On asking for refunds, the complainant's number was blocked. The complainant also informed that before subscribing to the service he was informed that the company is registered with SEBI.
   - The complainant alleged that he had received investment advisory services from the Noticee and made payments to the Noticee for providing the services. The website www.niftyandbanknifty.com disclosed that it was providing investment advisory services.
   - The complainant also provided details of bank account wherein consideration / advisory fees were paid as Axis Bank A/C no. 915010056106750, IFSC Code UTIB0001502.

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

4. The bank account provided by the Complainant has multiple credit transactions from various entities. Hence, it was inferred in the SCN that the said bank account was used for receipt of fees from various entities for the purpose of providing advisory services.

5. The SCN was served on the addresse of the Noticee by Speed Post. The Noticee did not submit any reply to the SCN. Subsequently, reminder letter dated October 29, 2021 was delivered to the Noticee through Speed Post. However, Noticee did not submit any response to the SCN. The matter was put up before me for granting an opportunity of hearing on November 15, 2021. In order to comply with the principles of natural justice a hearing was granted to the Noticee on March 11, 2022. On the said date the Noticee failed to appear, nor did they seek any adjournment to the hearing. In view of the same the hearing was concluded *qua* the Noticee.

<u>Consideration of submissions and findings:</u>

6. 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.

7. 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;"

8. I note that, the website, www.niftyandbanknifty.com *inter alia* claimed as follows:

> "Niftyandbanknifty.com – a advisory firm known for its accurate and concrete researches. The company comprises of a people having experience of more than 5 years in the stock market. By niftyandbanknifty.com, we mean all the dimensions of this company are as pure and reliable tips.
> A team that's always there to support and guide you in every sphere of your trading life. We endeavor constantly to give best trading experience to our customers by engaging a dedicated workforce.
> We have helped lot of retail and HNI client through our tips services to fulfill their financial goals by making their money work for them a better way. We try to follow the trend and ride it using technical analysis rather than predicting customer's needs.
> We believe in delivering expertise in providing stock market HNI calls for traders which include tips like nifty and banknifty option & future tips."

9. From the above, I note that the website www.niftyandbanknifty.com provided personalized investment advisory tips to its clients after taking into account clients' financial situation and goals. The website claimed that "niftyandbanknifty.com" is an advisory firm known for its accurate and concrete research and comprises of experienced team having more than 5 years of experience in stock market. I note that the website www.niftyandbanknifty.com was 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 and the said advice was specific to the clients. The website also mentioned various subscription packages for availing investment advisory services.

10. 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:

"HIGH GAIN STOCK FUTURE JACKPOT

HIGH GAIN STOCK FUTURE:

1. Daily stock future calls are provided.
2. Each call contains one entry, exit and stop loss
3. Profit booking, stop loss and constant follow-up is provided.

4. Each trade's profit & loss is calculated with 5 lots
5. Minimum Capital required is Rs.50 k – 1 lac.
6. Accuracy maintained 95%

Note: 100% purely intraday

HIGH GAIN STOCK FUTURE PRICING

1	MONTH	10000
3	MONTHS	24000
6	MONTHS	42000

NIFTYAND BANK NIFTY OPTION COMBO JACKPOT:

1. Daily 1 nifty and bank nifty option calls are provided.
2. Each call contains one entry, exit and stop loss
3. Profit booking, stop loss and constant follow-up is provided.
4. Each trade's profit & loss is calculated with 5 lots.
5. Minimum Capital required is Rs.30 k.
6. Accuracy maintained 98%
7. 100% purely intraday.

NIFTY AND BANK NIFTY OPTION PRICEING

1	MONTH	6000
3	MONTHS	14500
6	MONTHS	28800

NIFTY AND BANK NIFTY FUTURE COMBO JACKPOT:

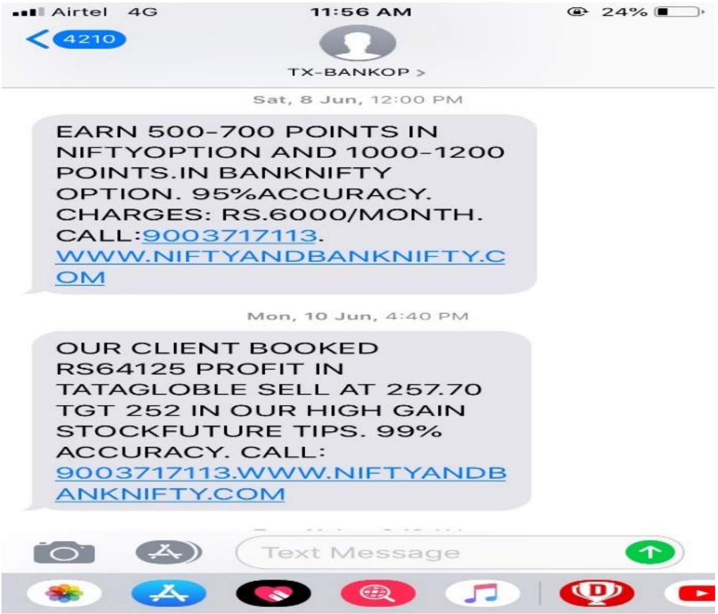
1. Daily 1 nifty and bank nifty option calls are provided.
2. Each call contains one entry, exit and stop loss
3. Profit booking, stop loss and constant follow-up is provided.
4. Each trade's profit & loss is calculated with 5 lots.
5. Minimum Capital required is Rs.50 k.
6. Accuracy maintained 95%
7. 100% purely intraday.

NIFTY AND BANK NIFTY FUTURE PRICING

1	MONTH	10000
3	MONTHS	24000

6	MONTHS	420000

11. From the SMSes submitted by the Complainant, it is observed that www.niftyandbanknifty.com solicited clients for investment advisory services through SMSes also. The copy of sample SMSes received from the complainant is given below:



12. In the present matter, investment advisory services were being offered through the website www.niftyandbanknifty.com *in lieu* of consideration. It is observed that the complainant had also transferred Rs. 6000 towards the investment advice to the following bank account mentioned on the website www.niftyandbanknifty.com:

Bank Name	Bank A/c. No.
Axis	915010056106750

13. Based on the information submitted by the complainant, KYC and Account Opening Forms (AoF) with respect to the beneficiary of the aforesaid bank account mentioned on the website www.niftyandbanknifty.com were received from Axis Bank. From the analysis of KYC, Account Opening Form and account statement submitted by the Axis Bank, it is noted as under:

a. The Noticee was the beneficiary and authorized signatory of the Axis bank account.
b. Multiple credit transactions were in the Axis Bank Account.
c. A total of 80 credits were made from different sources into the Axis Bank account during the period from 08.01.2019 to 10.08.2019. The total credits received in the aforesaid bank accounts is Rs. 7,22,500/-.

14. A sample of credit transactions in the Axis Bank Account provided by the Complainant transactions is given below:

Credit transactions matching 1-month advisory fee for Nifty and Bank Nifty Option Combo Jackpot (Intraday) package – Rs. 6000.00/-

Sl. No.	Date	Narration	Credited Amount in Rs.
1	13/05/2019	IMPS/P2A/913319723632/MAYURATR/KOTAKMAH/MBOFFICE	6000
2	20/05/2019	UPI/P2A/914014359270/SBIE504A0815A4E2C856F0C40	6000
3	20/05/2019	IMPS/P2A/914022926394/DHANESHM/BANKOFBA/Dhanesh	6000
4	21/05/2019	IMPS/P2A/914121898300/VRPRASAN/CITIBANK/Others	6000
5	22/05/2019	UPI/P2A/914223117925/Mr.SAQIB/State Ban / SAQIB A	6000
6	23/05/2019	UPI/P2A/914321566545/RAM RATTA/Oriental/Nifty B	6000
7	25/05/2019	UPI/P2A/914557158648/SANTOSH/State Ban/Payment	6000
8	29/05/2019	IMPS/P2A/914909817757/Mr. GEORGE/STATEBAN/INETIMPS	6000
9	29/05/2019	IMPS/P2A/914918808749/ABHISHEK/ICICIBAN/Abhi	6000
10	31/05/2019	UPI/P2A/915114738167/NEELAVANN/State Ban/Pay to	6000
11	03/06/2019	IMPS/P2A/91540717750/RAHULCSH/HDFCBANK/ONLINETR	6000
12	03/06/2019	NEFT/N1521908565766/SUDHAKAR KRISHNAJI PRABHUNE	6000
13	06/06/2019	IMPS/P2A/915718020652/PRERAK/YESBANKL/PAYMENT	6000
14	06/06/2019	IMPS/P2A/915720784066/MRSRESMY/STATEBAN/MOBUA017	6000
15	10/06/2019	IMPS/P2A/916121832665/SHABANAP/FEDERALB/NULL	6000
16	11/06/2019	IMPS/P2A/916207135042/SAGARDIL/CITIBANK/OTHERS	6000
17	25/06/2019	UPI/P2A/917628677144/REENA SIN/HDFC BANK/FROM JI	6000
18	27/06/2019	IMPS/P2A/917810919698/SCBBANK/SARASWAT/BRANCHIM	6000
19	29/06/2019	NEFT/BARBW19180346842/KULKARNI SATISH UMAKANT	6000
20	08/07/2019	UPI/P2A/918930080493/PRAVIN KU/STATE BAN/PAYMENT	6000

Credit transactions matching 1-month Advisory fee for the following packages -

a) **Nifty and Bank Nifty Future Combo Jackpot (Intraday) – Rs. 10,000.00/-**
b) **High Gain Stock Future Jackpot (Intraday) - Rs. 10,000.00/-**

Sl. No.	Date	Narration	Credited Amount in Rs.
1	20/02/2019	IMPS/P2A/905114911797/919500550507/MOBUA014 10463	10000
2	14/05/2019	BY CASH DEPOSIT-BNA/CWRO42408/7798/140519/CHENNAI	10000
3	27/05/2019	UPI/P2A/914776178600/PRIYANK/STATE BAN/PAYMENT	10000
4	12/06/2019	IMPS/P2A/916320573838/DIPAKKSM/ICICIBAN/NA	10000
5	15/07/2019	IMPS/P2A/919620673667/MRDINESH/STATEBAN/M OBUA018	10000

Credit transactions matching 3-month Advisory fee for the Nifty and Bank Nifty Option Combo Jackpot (Intraday) package – Rs. 14,500.00/-

Sl. No.	Date	Narration	Credited Amount in Rs.
1	10/06/2019	BY CASH DEPOSIT – BNA/CWRO42408/4752/100619/CHENNAI	14500

15. Since the amount of large number of credit transactions in the Axis Bank Account provided by the complainant matches with the amount of 1 month advisory fee of various packages offered through the website www.niftyandbanknifty.com, it is inferred that the said bank account was used for receipt of fees from various entities for the purpose providing advisory services.

16. From the KYC documents as provided by Axis Bank, I find that the Axis Bank a/c provided by the Complainant belonged to Mr. S Prabhu and his residential address was also mentioned on the KYC documents. Hence, the credits received though the Axis bank account i.e. 7,22,500.00 are treated as fees received by the Noticee for providing investment advisory services.

17. From the aforesaid facts, I find that Shri Prabhu, is the beneficiary and authorized signatory of the Axis bank account mentioned on the website www.niftyandbanknifty.com. Mention of bank account of Noticee on the website, wherein all the fees were deposited by the investors, shows that Shri Prabhu had hoisted the website and was beneficiary of the website. Thus, Shri Prabhu was engaged in giving advice relating to investing in, purchasing, selling

or otherwise dealing in securities or investment products, through the said website *in lieu* of consideration. The website www.niftyandbanknifty.com was used by Shri Prabhu as a tool to render Investment Advisory Services in lieu of consideration. From the discussion above, I find that the Noticee was giving investment advise, as defined in Regulation 2(1)(l) of IA Regulations, 2013.

18. 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 Noticee received Rs. 7,22,500/- in his bank account mentioned on the website www.niftyandbanknifty.com for the investment advisory services provided by it. Hence, I find that the Noticee was engaged in the business of providing investment advice to his clients, for consideration, and thus, acting as investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

19. 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:"*

20. 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.

21. 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.

22. 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.

23. The Noticee in his Axis Bank account no. 915010056106750, had received Rs. 7,22,500/- during the period from 08.01.2019 to 10.08.2019 through unregistered investment advisory activities as observed above.

DIRECTIONS

24. 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 coming into force of this direction, 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 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 Noticee, as directed in this order, from the bank accounts of the Noticee;

    e. After completing the aforesaid repayments, the Noticee 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, 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 and the direction at para 24(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 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 24(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 24(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 24(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.

25. This order comes into force with immediate effect.

26. 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: September 09, 2022 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

CURITIES AND EXCHANGE BOARD OF INDIA