National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53876	Date: September 28, 2022
Circular Ref. No: 133/2022	

To All NSE Members,

Sub: **Final Order in the matter of Suraj Kumar Rai (Proprietor Profit Mantra Research)**

SEBI vide its Order No. WTM/ASB/WRO/WRO/19751/2022-23 dated September 28, 2022, has hereby debarred the below mentioned 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 three (3) years from the date of this order or till the expiry of three (3) years from the date of completion of refunds to complainants/ investors as directed in para 13 (i) of the Order, whichever is later.

Sr. no.	Name of the entity	PAN
1.	Suraj Kumar Rai (Proprietor Profit Mantra Research)	AZIPR0640L

The Order directions 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.

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

Mr. Souradeep Ghosh (Extension: 23345), 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 Suraj Kumar Rai (Proprietor Profit Mantra Research)

WTM/ASB/WRO/WRO/19751/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

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

In respect of:

NOTICEE	PAN
Suraj Kumar Rai (Proprietor Profit Mantra Research)	**AZIPR0640L**

IN THE MATTER OF UNREGISTERED INVESTMENT ADVISORY SERVICES BY SURAJ KUMAR RAI (PROPRIETOR PROFIT MANTRA RESEARCH)

Background

1. This proceeding emanates from complaints dated April 07, 2016 and May 14, 2016 ("Complainants"), received by Securities and Exchange Board of India ("SEBI"), wherein it was stated that that Profit Mantra Research, which is a sole proprietorship of Suraj Kumar Raj, is taking money from investors and providing trading tips. The Complainants also mentioned that they had suffered losses as a consequence of recommendations provided by the Noticee

2. Pursuant to the receipt of the said complaint, the matter was examined by SEBI to ascertain the veracity of the information brought out in the Complaints and to determine whether there had been any violation of the provisions of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"), the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("IA Regulations") and any other Rules or Regulations. Consequent to the examination, an Show Cause Notice ("SCN") dated

September 14, 2021, was issued calling upon the Noticee to show cause as to why suitable directions under sections 11(1), 11(4) and 11B(1) of the SEBI Act should not be issued against the Noticee. The SCN also detailed the allegations against the Noticee, which is as follows:-

a. The Noticee was operating a website having domain name www.profitmantraa.in. The website was not operational during the time the examination was undertaken by SEBI and consequently archived records of the website were accessed from the web.archive.org.

b. It was noted from the archival records that the following was disclosed on the website of the Noticee:-

   "We provide recommendations for stocks, futures and options (F&O) traded in NSE and BSE, commodities including bullion, agri and metals traded in MCX and NCDEX.

   We are experts in proving calls and recommendations by SMS and out own messenger for stock cash, Nifty, Futures & Options and commodities."

c. The Noticee had advertised the following bank account on its website:-

Account Holder Name	Profit Mantra
Bank Account no	657305500290
Bank	ICICI Bank
Branch	Saket Nagar, Indore
IFSC Code	ICIC0006573

d. The total amount credited to the bank account of the Noticee from date of opening of the account (October 08, 2014) till May 18, 2017 was Rs.50,41,657.87, and there was Nil balance in the account as of May 18, 2017. Further, it was noted Rs. 27,18,379.86 was credited to the account from the payment gateway PayU Payments Private Limited ("PayU").

e. The payments made by one of the complainants through PayU was reflected in the bank account of the Noticee. The details of the payments made are given in the table below:-

Transaction Date	Settlement date (the date of credit by Payu to ICICI Bank)	Amount (Rs.)
23/02/2016	24/02/2016	5,000
02/03/2016	04/03/2016	20,000
21/03/2016	22/03/2016	5,000
23/03/2016	29/03/2016	10,000

f. In view of the above, it was alleged in the SCN that the Noticee was offering investment advisory services to his clients against consideration, without obtaining certificate of registration from SEBI, in contravention of the provisions of Section 12(1) of the SEBI Act read with Regulation 3 of the IA Regulations.

3. I noted from the records that SCN could not be served on the addresses of the Noticee, available with SEBI, by Speed Post. Subsequently, the service of SCN to the Noticee was completed through publication in newspaper on February 18, 2022. The Noticees did not submit any reply to the SCN. Subsequently, in compliance with the principles of natural justice, a hearing was granted to the Noticee on July 22, 2022. However, the Noticees failed to enter appearance on the said date nor sought any adjournment. In view of the same, the hearing was considered as concluded.

Consideration

4. I have carefully considered the facts narrated in the SCN and other materials available on record. I note that the only issue that arises for consideration in this proceeding is whether the Noticee has acted as an unregistered investment adviser in violation of the provisions of the SEBI Act, 1992 and the IA Regulations.

5. Before moving forward to address this issue, it will be appropriate to refer to the relevant provisions of the SEBI Act and IA Regulations alleged to have been violated by the Noticee.

SEBI Act, 1992

"Registration of stock brokers, sub-brokers, share transfer agents, etc.

12 (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:"

SEBI (INVESTMENT ADVISER) REGULATIONS, 2013

"Application for grant of certificate.

3. (1) On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation (2) within the said period of six months, till the disposal of such application."

6. As stated earlier, the present proceedings emanate from complaints received by SEBI alleging that the Noticee was providing investment advisory services in lieu of consideration. It is noted from contents of the website hosted by the Noticee, the details of which are given in paragraphs 2(b) – (c) of this Order, that the Noticee was advertising

investment advisory services on the website www.profitmantraa.in. I also note from the records that the pricing of the various packages offered by the Noticee was also available on the said website. Further, the details of the bank account and payment gateway for transferring the payments for availing the packages was also available on the website.

7. I note from the Complaints received by SEBI that the complainants have transferred money to the bank account held in the name of Profit Mantra for availing investment advisory services. It is noted from the records, the details of which are given in paragraph 2(e), that the payments made by one of the complainants is reflected in the bank account of the Noticee.

8. In this respect, it is noted that the IA regulations define the terms 'investment advice' and investment advisor as follows:

*"**investment advice**" means "advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning".*

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;

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

9. It can, therefore, be noted from the definition of 'investment adviser' that any person who provides 'investment advice' for consideration comes within its ambit. It was further provided on the firm's website that payments can be made to the bank account maintained with ICICI Bank (A/c. No. 657305500290) and also through the payment gateway PayU.

Also, as stated earlier, the payments made by one of the complainants was reflected in the bank account (A/c. No. 657305500290) advertised on the website hosted by Profit Mantra.

10. SEBI notified the IA regulations in 2013 to put in place frame for registering and regulating investment advisors. Mandatory registration requirement under the IA Regulations is an important safeguard put in place by SEBI to ensure that only registered entities, satisfying the qualification criteria and conducting business in accordance with the IA Regulations, are engaged in providing advisory services to the investors. Registration ensures that a registered Investment Advisor will carry out its activities in compliance with the terms and conditions of the certificate of registration and by fulfilling the prudential norms, risk profiling measures, disclosure and other requirements mandated under the Regulations.

11. In view of the above, I have no hesitation in holding that the Noticee was engaged in provided investment advisory services without obtaining a certificate of registration from SEBI in contravention of the provisions of regulations 3(1) of the IA regulations read with section 12(1) of the SEBI Act.

12. I note from the records that an amount of Rs.50,41,657.87 was credited to the bank account held in the name of Profit Mantra, from date of opening of the account (October 08, 2014) till May 18, 2017. Further, as these proceedings are being conducted ex-parte as the Noticee has failed to enter appearance, I don't have the benefit of considering his reply while arriving at the quantum of funds mobilised by the Noticee while rendering unregistered investment advisory services. Given the same, the entire amount credited to the account - Rs.50,41,657.87 – is being considered as the funds mobilised in contravention of the provisions of the SEBI Act and the IA Regulations.

Directions

13. I, in exercise of powers conferred upon me under sections 11(1), 11 (4) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby direct that: –

i. The Noticee shall within a period of three months from the date of 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;

ii. The Noticee shall issue a public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as name, address and contact details, within 15 days of coming into force of this order. A period of two months from the date of the public notice, as stated above, shall be provided to the investors/clients for submitting any claims;

iii. The repayments to the investors /clients shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;

iv. The Noticee is prevented from selling his assets, properties and holding of mutual funds/shares/securities held by him in Demat and physical form except for the sole purpose of making the refunds as directed above. Further, banks are directed to allow debit from the bank accounts of the Noticee, only for the purpose of making refunds to the investors /clients who were availing the unregistered investment advisory services or unregistered portfolio management services from the Noticee;

v. After completing the aforesaid repayments, 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. C-7, 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 sub-paragraph (iv) above shall cease to operate upon filing of such report on completion of refunds to investors /clients;

vi. 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 three (3) years from the date of this order or till the expiry of three (3) years from the date of completion of refunds to complainants/ investors as directed in sub-paragraph (i) above, whichever is later.

14. This Order is without prejudice to any other action that SEBI may initiate.

15. The direction for refund, as given in paragraph 13 (i) above, shall not act as a bar on the clients /investors to pursue any other legal remedy 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.

16. The above directions shall come into force with immediate effect.

17. A copy of this Order shall be forwarded to:-

i. all the recognised Stock Exchanges, registered Depositories, Banks and Registrar and Transfer Agents for necessary compliance with the above directions; and

ii. the Government of Madhya Pradesh for action, if any.

Place: Mumbai **ASHWANI BHATIA**

Date: September 28, 2022 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA