National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53894	**Date: September 29, 2022**
Circular Ref. No: 135/2022	

To All NSE Members,

Sub: **SEBI order in the matter of Money Capital Investment – Vijay Thakur**

This is with reference to NSE Circular No. NSE/INVG/43489 dated February 10, 2020, in respect of SEBI Order No. WTM/MPB/IMD/ILO/100/2020 dated February 07, 2020.

SEBI now vide its order No. WTM/SM/WRO/WRO/19857/2022-23 dated September 29, 2022, has hereby restrained the below mentioned entity from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of six (06) months from the date of this order or till the expiry of six (06) months from the date of completion of refunds to investors, as directed in SEBI order, whichever is later.

Sr. no.	Name of the entity	PAN
1	Money Capital Investment – Vijay Thakur	BEVPT8718L

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.

National Stock Exchange of India

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

Mr. Apurv Garg (Extension: 24546), 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: SEBI order in the matter of Money Capital Investment – Vijay Thakur

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4), 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF MONEY CAPITAL INVESTMENT – VIJAY THAKUR

In respect of:

Noticee no.	NAME	PAN
1	Money Capital Investment – Vijay Thakur	BEVPT8718L

1. The genesis of the present proceeding lies in complaints received by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against fifteen (15) entities, who were allegedly involved in the activities of rendering investment advisory during April, 2019 to November 26, 2019, without obtaining requisite registration from SEBI.

2. Based on the detailed examination of the complaints, certain common factors were observed to be present in the activities of those entities, which are briefly narrated as under:

i. The entities were presenting themselves to be in the business of providing investment advisory, relating to investments in securities market, forex etc.

ii. The entities were also having their respective websites, through which the investors and investments were being solicited. In some of the websites, the bank account details for making payments were also provided.

iii. None of the entities or their proprietor or partners, as the case may be, were registered with SEBI in the capacity of investment advisor.

iv. Few of the such websites had made claims of having registration with SEBI for the purpose of investment advisory, whereas certain other websites had gone further to the extent of displaying the registration number of a totally unrelated but of an investment advisor registered with SEBI.

v. The entities were receiving money either directly in their respective bank accounts or through payment gateways like PayUmoney, Paytm etc., and had received payment against the services rendered or to be rendered.

3. As the examination of the said entities indicated that all of them were indulged in carrying out the business activities of an investment adviser and for which no requisite registration was sought/obtained from SEBI, it was deemed appropriate to take emergent steps so as to protect the interest of the investors. Accordingly, a common *ad interim ex-parte order* dated February 07, 2020 (hereinafter referred to as "**the *interim* order**") was passed against the said entities. The *interim* order has *inter alia* observed as:

i. The entities were deliberately concealing the fact that they did not have any registration from SEBI;

ii. By such an act, the investors were being induced to deal in securities by availing the services of the entities;

iii. The said acts on the part of the entities were *prima facie* covered under the definition of fraud as laid down under regulation 2 (1) (c) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**the PFUTP Regulations**"); and

iv. By such commissions and omissions on their part, the entities have *prima facie* violated Section 12 (1) of SEBI Act, 1992 read with regulation 3 (1) of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "the **IA Regulations**"), Section 12 A (a), (b) and (c) of the SEBI Act, 1992 and regulations 3 (b), (c), (d), 4 (1) and 4 (2) of the PFUTP Regulations.

4. Based on the aforesaid *prima facie* observations, and in order to protect the interest of the investors of securities market, the *interim* order has issued the following directions against the entities/Noticees therein:

i. The Noticees shall cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any manner whatsoever, until further orders.

ii. The Noticees shall not access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.

iii. The Noticees shall not divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.

iv. The Noticees shall not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.

v. The Noticees shall immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc., in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.

vi. The Noticees shall provide a full inventory of all assets held in the name of the proprietorship or the proprietor and firm or the partner, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.

vii. Any person while working under the above mentioned Noticees as employee or otherwise, shall cease and desist from undertaking the activity of investment advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.

viii. The Banks are directed not to allow any debits/ withdrawals from or credits to the accounts of the Noticees, held jointly or severally, without the permission of SEBI. The Banks are directed to ensure that all the above directions are strictly enforced.

ix. The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of the Noticees held jointly or severally.

x. The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Fund units, held in the name of the Noticees, jointly or severally, are not transferred or redeemed.

5. As the aforesaid *interim* order has been issued *ex-parte*, the entities therein were provided with an opportunity to file their objections within a period of twenty-one (21) days of the said *interim* order.

6. The list of the Noticees of the *interim* order also included the *Noticee* herein, viz. Money Capital Investment through its sole proprietor Shri Vijay Thakur. It is noted from the records that the copy of the *interim* order was served on the *Noticee* by way of registered post on vide letter dated February 10, 2020. The records further indicate that the *Noticee* vide his letter dated March 12, 2020, sought time to file a reply by engaging a legal consultant to understand the nuances of the regulatory framework governing investment advisors. The reply so submitted has also stated that he has an educational qualification of 10th class only and he was not aware that registration from SEBI is required for rendering (investment) advisory services. The *Noticee* further submitted that someone had contacted him to start the business and made a promising proposal, and he handed over his documents like Aadhar Card and PAN Card, and the said person asked to open a bank account and took some documents to obtain some license.

7. I note that the personal hearing of the *Noticee* took place through Video Conferencing on July 22, 2021, wherein the Authorised Representative of the *Noticee* appeared on its behalf and contended that before replying to the allegations made in the *interim* order, all the documents relied upon need to be furnished to him to enable him to file a proper response to the allegations made in the show cause cum *interim order*. Accordingly, in compliance with the principles of natural justice, vide letter dated July 23, 2021, copies of all such documents that were relied upon while issuing the *interim* order were furnished to the *Noticee*. The next personal hearing of the *Noticee* in the matter took place on July 05, 2022 when the Authorised Representative made oral arguments on behalf of the *Noticee*. Based on such arguments, vide an email dated July 06, 2022 certain queries were raised to the *Noticee,* however, despite a follow up email dated August 01, 2022, the said queries have not been addressed to by the *Noticee*.

8. The submissions made by the *Noticee* in his replies, personal hearing etc., are summarised hereunder:

i. The *Noticee*, while residing in a small village came to know about a vacancy at Mahakal Computers and after he visited the said office in September, 2017, he got a job of an office boy/delivery boy at a salary of INR 7,500. The *Noticee* also submitted copy of his PAN card, Aadhar etc., for verification.

ii. After one month, he was offered a salary of INR 20,000 on the condition that he should sign some paper, to which he agreed and his signatures were also taken on a blank Bank account opening form. Apart from the same, he has also given his photograph and other details.

iii. The *Noticee* does not have any knowledge of the authorised signatory of the bank account so opened, in his name.

iv. The *Noticee* worked at Mahakal Computers from October, 2017 to October, 2019, and for last four months, no salary has been paid to him despite repeated follow ups and the *Noticee* does not know the whereabouts of its owner.

v. A complaint dated November 23, 2019 has been lodged by the *Noticee* with the concerned police station stating therein that the *Noticee* has worked with Mahakal Computers (Mr. Mukesh Chauhan being its owner) from the period of October 02, 2017 to October 29, 2017. The said complaint had also alleged that the *Noticee* has signed certain blank documents, which he apprehends to have been misused.

vi. The *Noticee* had signed blank account opening form only and he did not have any knowledge for what purpose the said account was opened. The *Noticee* had also given photographs and other details, which he apprehends to have been misused. The *Noticee* is availing legal remedy in other forums against the owner of Mahakal Computers for misusing his documents.

9. Before adverting to the facts of the case, it is apposite to refer to the relevant provisions of law alleged against the *Noticee* in the *interim* order cum SCN and the same are reproduced herein for facility:

SEBI Act, 1992

Section 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:"

Section 12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"

SEBI (Investment Adviser) Regulations, 2013

Regulation 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".

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

Regulation 2 (c): "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly
…"

"Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

……………………………….

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

………………………………………..

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities"

10. I observe that the *Noticee* has sought an *alibi* from the charges by claiming that he was working as an office boy/delivery boy and his documents have been misused by one Mr. Mukesh Chauhan, and further to support the said claim, a copy of a complaint lodged by him with the police has also been filed with the reply. I have carefully perused the claim made by the *Noticee,* and have also perused the documents filed by the *Noticee*. However, when the said documents/submissions are confronted with the material on record, the contradictions and evasiveness of such claims get exposed, rendering his explanations to be blatantly specious and

not sufficient enough to demolish the allegations levelled against him in the SCN, for the following reasons:

i. At the outset, it is noted that the claim of the *Noticee* of having worked with Mahankal Computers (Mr. Mukesh Chauhan) is a bald assertion and no evidence whatsoever, supporting such claim or even supporting the existence of Mahankal Computers/Mr. Mukesh Chauhan has been brought to the table. The documentary evidence showing any kind of employee-employer relationship between the *Noticee* and Mahankal Computers/Mr. Mukesh Chauhan like appointment letter, salary statements, bank account credit entries of salary, income tax filings, TDS certificates, or any other documentary evidence like provident fund statements etc., are conspicuously absent from the submissions of the *Noticee* so as to lay credence on the claim that he had no role to play directly or otherwise, with the alleged rendering of investment advisory to investors. Notwithstanding the above, I observe that the allegation in the SCN is not against the Mahankal Computers but against the Money Capital Investment, a firm whose sole proprietor is Mr. Vijay Thakur and therefore, the assertion that Mr. Vijay Thakur initially joined Mahankal Computer as an employee would not in isolation be adequate to successfully discharge him from the allegations made in the SCN, when the records *inter alia*, Bank Account, Nomination in the Bank Account, etc., bear undisputed evidence that is sufficient to hold these allegations.

ii. Even as per the submission, it is observed that the *Noticee* has not disputed and rather has admitted to have given all his details and KYC documents to one Mr. Mukesh voluntarily against the offer of getting his salary doubled. In this respect, assuming his allegation of misuse of his documents is to be accepted as true, it is observed that while admitting such a covert action for which he has been monetarily rewarded, the *Noticee* cannot escape his liability for willingly permitting the alleged misuse of his KYC documents by others, more so when, except for providing the name of Mahankal Computers/Mr. Mukesh, no other details about the actual persons who were according to him were behind the said alleged activity of unregistered investment advisory, have been put forward. Therefore, the above claim of misuse of his personal documents is not sufficient to aspire confidence to grant the *Noticee* exoneration from the allegation when, it is not the defence of the *Noticee* that he had no clue about the same as nothing has been placed in record to suggest as to why no queries were ever raised by him against the offer he received for doubling his salary, which he rather willingly accepted without making an *iota* of enquiry as to what the person making such offer is going to do with his KYC documents and with the bank account that was opened in his name.

iii. Further, had the claim of the *Noticee* been *bonafide*, he was expected to have taken this claim as a defence from the very outset of the proceedings. Surprisingly enough, in the first reply dated March 12, 2020, filed by the *Noticee,* he sought only an extension of time to file a reply but remained conspicuously silent on any aspect of the so called misuse of his documents by others nor did the said reply whisper anything about the purported job of delivery boy that he claims to have taken or about any police complaint having ever lodged by the *Noticee*. The said reply is rather an admission on the part of the *Noticee* of the alleged violations when he pleads ignorance about any law governing regulation of investment advisory services and then seeks time to engage a legal representative to understand the legal framework governing the investment advisory business. In exact words, the said letter *inter alia* submitted that:

*यह सूचित करना चाहूंगा की मैं केवल 10वीं उत्तीर्ण उम्मीदवार हूँ और मुझे जानकारी नहीं की **सलाहकर सेवा प्रदान करने के लिए सेबी पंजीकरण प्राप्त करना आवश्यक है।** किसी ने मुझसे संपर्क किया और मुझे व्यवसाय शुरू करने के लिये पैन कार्ड और आधार कार्ड देने के लिए आकर्षक प्रस्ताव दिया और मेरे दस्तावेज़ ले लिए। उन्होंने बैंक खाता खोलने के लिये भी कहा और कुछ लाइसेंस प्राप्त करने के लिए भी दस्तावेज़ लिए।*

आपसे अनुरोध है की कृपया सभी प्राप्त करने वाले दस्तावेज़ों, सूचनाओं और अन्य आवश्यक वैधताओं को इकठ्ठा करने और इस संदर्भ मे कुछ कानूनी सलाहकर नियुक्त करने के लिये कृपया एक महिने का समय दे।

मैं उस आदेश को पूरी तरह से समझने में अस्मर्थ हूँ जिसके लिए मुझे कानूनी सलाहकर को निवेश सलाहकर के रूप में काम करने के लिए बनाए गए कानूनी नियमों और नियमों को समझने की आवश्यकता है। (emphasis supplied)

From the above, even if for a moment it is believed that some benefit of doubt needs to be extended to the *Noticee* on the basis of to his statement that someone had contacted him and took his documents, the same again falls short for acceptance as he candidly admits that he had received a lucrative business proposal in lieu of giving his KYC documents with his own consent, for being used by others (*व्यवसाय शुरू करने के लिये पैन कार्ड और आधार कार्ड देने के लिए आकर्षक प्रस्ताव दिया*). Having accepted that he had received an offer to initiate a business proposal, the *Noticee* in the subsequent written reply dated September 28, 2021 makes a quick turn back and seeks shelter under a plea that he is a victim of fraud by claiming that his personal documents have been misused by Mr. Mukesh in lieu of extra salary. The said claim is being supported by a police complaint dated November 23, 2019, i.e., prior to the filing of the first reply dated March 12, 2020. Having gone through the said police complaint placed on record, it is observed that the same is in the category of a non-cognisable complaint. Therefore, during the personal hearing, the *Noticee* was asked to furnish the steps taken by him to pursue his complaint lodged with the police, however, no details of any such follow up action have been given by the *Noticee* so as to lend any credence to the claim advanced by him so as to dispel the allegations made on him in the SCN. It is also noted that despite specifically asking to submit the documents like copy of Income Tax Returns, bank account statements showing salary payment, etc., the *Noticee* has not submitted the requisite documents so as to prove *bonafide* of his claim.

Under the circumstances, it is found beyond comprehension that a person who is facing regulatory action and who seeks exoneration on the ground that he has been wrongly implicated or proceeded with, as his documents were misused by another person, opts to rest on record only a complaint that he claims to have lodged just before the *interim* order was passed which cannot be found to be enough to accept such a submission.

iv. The contradictions and speciousness in the claim of the *Noticee* do not end here. The ambiguity in the claim of the *Noticee* being a victim is further observed when the perusal of the Account Opening Form shows that the in the column pertaining to the nomination, the name of one Mr. Ajay Thakur has been filled in, who is found to be the brother of the *Noticee,* At this stage, I note from the records that the *interim* order was passed against multiple entities and one of such entities was Mahankal Capital, which has also been alleged to be rendering investment advisory without having registration and the proprietor of the above Mahankal Capital is Mr. Ajay Thakur, i.e., the brother of the present *Noticee.* When the brother of the *Noticee* was already engaged in giving unauthorised investment advisory services and is also the Nominee in the bank account opened in the name of the *Noticee*, it is difficult to accept his claim that some third person mischievously took the personal documents of the *Noticee,* got a bank account opened in the name of the *Noticee* and at the same time inserted his brother as a nominee in the said account, without his knowledge even though he signed the said account opening form.

v. I also observe that the present proceedings are being conducted to decide the culpability of the *Noticee*, for the allegations levelled in the *interim* order, hence in order to vindicate his case, the *Noticee* is under an obligation to provide clinching evidence to dispel the allegations made against him. However, the *Noticee* has merely attempted to shift the blame of regulatory violations by putting up some story, without any credible evidence to corroborate such a story.

vi. Thus, all in all, there does not appear to be a case furthering the claim of the *Noticee* that his documents were misused by someone against his will, knowledge and consent to open a bank account in his name filling in all his actual details in the bank account form, moreso when there is no concrete finding of police authorities yet on the complaint lodged by the *Noticee*. The above claim also fails to aspire credence when it is looked from the undisputed fact, that the *Noticee* is not an illiterate person. The *Noticee* is 10^{th} pass and has tendered his documents against a lucrative personal gain promised to him. Another claim put forth by him is that he was not aware at that point in time that to engage in rendering advisory it requires registration of any kind. This argument of the *Noticee* is further found to be self-contradictory to his earlier contention of someone misusing his personal documents/information and not advancing his claim, hence, deserves rejection without any further consideration.

vii. I further note that the conduct of the *Noticee* in the present proceedings has further compounded the allegation against him. As noted earlier, during the personal hearing, the *Noticee* was advised to furnish copies of his income tax returns, bank account statements etc. However, no such documents have been filed so as to support his defence taken in the present case. I observe that in such a case where a complex *alibi* in the name of third person having misused his personal documents/information is being made, it was incumbent upon the *Noticee* to come out clean and produce all the relevant documentary evidence including the documents such as I.T. Returns called from him for better appreciation of his contentions. In the absence of any evidence to support his cause, I am constrained to have an adverse observation on the *Noticee* as I have no documentary evidence to see as to what income he has disclosed during relevant period before the tax authorities.

11. Moving on to the merits of the case against the *Noticee*, it is noted from the *interim* order that a complaint dated September 10, 2019 was received by SEBI against the *Noticee.* The said complaint averred that the *Noticee* has taken an amount of INR 1.30 Lakh from the complainant and by committing a fraud on him in the name of trading in shares, a loss of INR 70,000 has been caused to the said complainant by the *Noticee*. In support of his complaint, the copy of payment receipts for the payments made through payment gateway (Easebuzz) were also furnished by the complainant.

12. Based on the information so ascertained from the payment gateway Easbuzz, it emerged that for the two payments amounting to INR 22,195 and INR 40,000 made by the said complainant and the beneficiary of the above mentioned transfer was the *Noticee* herein, whereas for another transaction amounting to INR 13,250, the beneficiary was another entity "Forex Factory", with the business name Mahankal Capital. The other details with respect to the aforesaid transactions, as furnished by Easbuzz are as under:

Name	Money Capital Investment
Email	info@moneycapitalinvestment.com
Bank Details	BANK OF INDIA, Account No – 891211610000062, Branch, Kataphod, Kataphod, Disitt- Dewas
PAN	BEVPT8718L
Business Name	Vijay Thakur

Name	Forex Factory
Email	info@moneyviaresearch.com
Bank Details	HDFC BANK, Account details - 50200038380901, Branch Ashta Sehore.
PAN	BHPPT1291P
Business Name	Mahankal Capital

13. The facts that have emerged with respect to the *Noticee* are that it is a proprietorship firm, with Mr. Vijay Thakur, resident of Aroliya, Jewar is its sole proprietor. In the bank account linked with the Eazebuzz payment account, a total amount of INR 52,65,147/- have been received/credited during the period of September 04, 2017 to September 21, 2019. Out of the said credits, many credit entries have been received through the payment gateways like Easebuzz, etc.

14. At the time of passing of the *interim* order, the *Noticee* was having a website with link as: http://moneycapitalinvestment.com. However, it is observed that presently, the said website is not functional. Nevertheless, it is noted from the *interim* order that the said website had claimed that the *Noticee* was eligible to offer customized services, which could be availed by investors/traders for their advantage. In this respect, the relevant portion of another assertion made on the said website, as noted in the *interim* order is reproduced hereunder:

> "*Money Capital Investment- A SEBI Register Company has been gained a foot strongly among Stock Advisory Companies & Investment advisory companies in India by giving the best research call and heavy one to one follow-ups. Now it has become most desirable Investment Advisory Company who covers each & every segments of Equity market & Commodity market. We provides recommendations in Cash, F&O, traded in NSE, BSE, & Metal, Base Metal, Agri Commodity traded in MCX, NCDEX Exchange, Currency tips traded in Forex Exchange.*" (sic)

15. From the perusal of the facts noted in the *interim* order so far as the act and conduct of the *Noticee* herein and other materials available made before me, it is concerned, it is observed that:

I. The *Noticee* firm was presenting itself, through Digital Media (website), as an investment advisor, having been granted registration by SEBI, whereas, there is no such registration granted to the *Noticee* by SEBI to act as an investment advisor.

II. It can't be therefore ruled out that the *Noticee* through the proprietor's physical media/physical interactions with public, was also similar such misrepresentation in the name of another registered investment adviser thereby projecting itself to be a registered investment advisor for rendering investment advisory services.

III. An amount of INR 52 Lakh (approx.) has been credited in the bank account of the *Noticee* during the period of September 04, 2017 to September 21, 2019.

IV. The afore-stated banking transactions strongly indicate that the *Noticee* was acting as an investment advisor as per the complaint filed against it and was evidently soliciting and collecting money in lieu of such investment advisory services rendered by it. In the process, *Noticee* has received such payments during the period of the aforesaid period of two years, as found from its bank account.

16. On examining the said act on the part of the *Noticee* from the lens of the definition of investment advice as envisaged under the IA Regulations, there is no *iota* of doubt that the *Noticee* has indulged in the activities of rendering investment advice to the investors. In the respect, regulation 2(1) (l) of the IA Regulations defines investment advice as: *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,* whereas regulation 2 (1) (m) defines investment adviser *as 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.*

17. In the light of the above provisions of law, the examination of the materials on record so as to scrutinise the act, omission and conduct of the *Noticees*, I find that the *Noticee* has issued investment advice pertaining to trading in shares in lieu of monetary consideration and the acts of the *Noticee* qualifies all the ingredient to be termed as an investment adviser. In this respect, it is further found that the *interim* order categorically alleges that the acts of the *Noticee* were in the nature of investment advisory and for which no registration has been possessed by the *Noticee*. He has also not advanced any submission denying the contents published on the website disclosing that his proprietary firm was providing recommendation/ tips, pertaining to trading in equity, commodity derivatives, stock futures etc., and was also giving mcx tips, ncdex tips, etc. It is also observed that no explanation has been offered with respect to the details of source of those credit entries in the bank account which belonged to the *Noticee*. Moreover, the disclosures made on the website, the account details provided to the public to deposit money for availing such services and further details provided in the website pertaining to the Easebuzz Payment Gateway are sufficient to hold that the *Noticee* has deliberately engaged itself in the activities of rendering investment advisory pertaining to securities market. To sum up, I observe that the

Noticee has not been able to persuade me that the activities of investment advisor, as alleged in the *interim* order to have been committed by it, were not in the nature of investment advisory. Another factor relevant for the present proceedings is that no dispute has been raised by the *Noticee* with respect to the amounts received in the bank account as unearthed by SEBI which have apparently been received in the absence of anything to the contrary, against the unregistered investment advisory services rendered by it to various investors.

18. Section 12 of the SEBI Act, 1992 read with the alleged provisions of the IA Regulations, prohibits such activities, in case the same is carried out without having proper registration from SEBI. The *interim* order alleges that the *Noticee* has not been registered with SEBI, whereas, its website and examination of complaints received show that it has indulged in representing that it is registered with SEBI.

19. The above said acts of fraudulent misrepresentation and unauthorised advisory services on the part of the *Noticee* are clearly an expression of falsehood and concealment of reality, with the sole aim to induce the gullible investors to deal in securities. I would have no hesitation to hold here that such an act on the part project that its firm is registered with SEBI so as to further its illegal activities of providing investment tips without holding a *bonafide* registration from SEBI, has certainly caused strong inducement to the gullible investors, who would never have paid him their hard-earned money as fees, had the said misrepresentation not been made by the *Noticee* to them through its website or otherwise. In this regard, the observation recorded by the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Kanaiyalal Baldevbhai Patel [(2017) 15 SCC 1]* is worth quoting: *"…A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did…"* Thus, applying the aforesaid test in the present case, it would not be a mere surmise that the investors would not have fallen trap to the aforesaid unauthorised investment advisory services indulged in by the *Noticee,* had the *Noticee* not made such false claims before them without having a proper and valid registration from SEBI. Therefore, I am constrained to observe that the above acts of the *Noticee* of resorting to misrepresentation spreading falsehood about its status as an investment adviser

and deliberate concealment of facts are fraudulent in nature, having the potential to fraudulently induce the investors to deal in securities by availing the services of the *Noticee*.

20. It is noted that the Preamble of SEBI Act, 1992 *inter alia* stipulates that the establishment of SEBI is primarily for the purposes of protection of interest of the investors in the securities market. In furtherance of the same, Section 11 empowers SEBI to take measures as deemed fit to achieve the avowed objective of the Act. Section 11 (2) (b) of the SEBI Act *inter alia* provides that SEBI may take measures so as to register and regulate the working of investment advisers and Section 12 (1) casts an obligation on entities to take registration from SEBI before acting as an investment adviser. Similar such condition of obtaining registration from SEBI, before acting as an investment adviser, is also stipulated under regulation 3 (1) of the IA Regulations. It is also relevant to note here that Hon'ble Courts of the country have time and again held the SEBI Act, 1992 to be a social welfare legislation. To cite one of such case, reference may be made to the observations of Hon'ble Supreme Court passed in the matter of *SEBI Vs. Ajay Agarwal (Civil Appeal no. 1697 of 2005; date of decision: February 25, 2010): "…The said Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors…"*

21. Similarly, in the matter of *N. Narayanan Vs. Adjudicating Officer, SEBI, (date of decision: April 26, 2013)*, Hon'ble Supreme Court has observed *inter alia* as:

"…Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve market integrity and to prevent Market abuse. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. Market abuse impairs economic growth and erodes investors confidence…………"

……………………………………………………………………………………………..

SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that *our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto…. SEBI has the duty and obligation to protect ordinary genuine investors and the SEBI is empowered to do so under the SEBI Act so as to make security market a secure and safe place to carry on the business in securities..."*

22. I may elaborate here that stipulating a condition of registration is not a mere paper formality to grant a license to operate in the field of investment advisory. A holistic perusal of the IA Regulations would indicate that the basic networth, qualification, experience criteria etc., have been laid down in the said Regulations. Further, after obtaining registration, it is incumbent upon the investment adviser to act in a fiduciary capacity while dealing with its clients and to follow numerous stipulations as laid down in the IA Regulations, with the underlying objective of protection of the interest of investors who would avail the services of such investment adviser. The IA Regulations also outline the Code of Conduct that needs to be adhered to by the registered investment adviser. Besides, on any occasion when the investor feels aggrieved, he may very well set the complaint redressal system of SEBI in motion so as to seek redressal of his grievance against such registered investment adviser. Thus, in totality, the ultimate objective that is intended to be achieved by prescribing registration from SEBI before acting as an investment adviser, is to comply with the statutory mandate of protection of the interest of investors.

23. In the facts of the case, as observed above, the *Noticee* has blatantly held himself out as an investment adviser, for which no registration has been obtained from SEBI. The *Noticee* has not been able to put forth any argument or submission to constrain me to even doubt the *prima facie* findings, recorded in the *interim* order. Based on the complaint received by SEBI which shows that payments have actually been received into the bank account of the *Noticee* from the investors and also from the contents of the website which provided details of the bank account and also a payment gateway link connected to the bank account of the *Noticee*, it is clear that the *Noticee* was rendering investment advice in lieu of monetary consideration and asked its clients to pay to it through the said payment gateway that was linked to his bank account. It is not clear from the records as to how many investors have been catered by the *Noticee,* however, the transactions noticed from the bank account of the *Noticee* have revealed that as much as INR 52 Lakh (approx.) have been credited in the said account.

24. Moreover, the *Noticee* has rather been found to have projected that its firm is registered with SEBI, which can be best termed as a subterfuge to trap more and more innocent investors. A feeble attempt to project himself as the victim of a fraud which was infact created by himself, has been made which has been rendered nugatory for the reasons recorded in details in the previous paragraphs of this order. Under the circumstances, I am convinced that the *Noticee* has violated Section 12 (1) of SEBI Act, 1992 read with regulation 3 (1) of IA Regulations, as it has illegally acted as an investment adviser without obtaining the requisite registration from SEBI. Further, the *Noticee* has also violated Section 12 A (a), (b), (c) of SEBI Act, 1992; Regulation 3 (b), (c), (d), 4 (1), 4 (2) (k), due to its fraudulent conduct of falsely claiming to be a SEBI registered investment adviser.

25. In view of the foregoing discussion and my observations and to protect the interest of investors, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B (1), 11 D read with Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 11of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, hereby pass the following directions:

i. The *Noticee* shall within a period of three months from the date of this Order, refund the money received from the clients/investors, as fees/compensation or in any other form, in respect of its unregistered investment advisory activities.

ii. The *Noticee* shall cause public notice to be issued 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 their contact person such as names, addresses and contact details, within 15 days of coming into force of this Order;

iii. The repayments to the clients/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;

iv. The *Noticee* and its proprietor Mr. Vijay Thakur are restrained 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 who were availing the investment advisory services from the *Noticee*, as directed in this order, from the bank accounts of the *Noticee*, wherein debit has been frozen by virtue of *interim* order dated February 07, 2020.

v. After completing the aforesaid repayments, the *Noticee* shall file a report within a period of 15 days of such completion with SEBI addressed to Division Chief, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan-II, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051, showing the completion of refund as directed above and the said report shall be duly certified by an independent Chartered Accountant and the direction at paragraph 25 (iv) above shall cease to operate upon filing of such report on completion of refunds to complainants/investors.

vi. The above direction for refund does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the *Noticee* refund of money or deficiency in service.

vii. The *Noticee* is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of six (06) months from the date of this order or till the expiry of six (06) months from the date of completion of refunds to investors, as directed above, whichever is later.

viii. The *Noticee* shall cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, without obtaining a certificate of registration from SEBI as required under the securities laws.

26. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticee* shall remain frozen.

27. The directions issued under the *interim* order against the employees of the *Noticee* are directed to be discontinued.

28. Subject to above, the *interim* order stands disposed of *qua* the *Noticee.*

29. The Order shall come into force with the immediate effect.

30. A copy of this order shall be forwarded to the *Noticee*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

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DATE: SEPTEMBER 29, 2022 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA