NSE

India@75
A guiding light, shining bright

National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/ 54676	Date: December 01, 2022
Circular Ref. No: 187/2022	

To All NSE Members

Sub: Final Order in the matter of M/s. Capital Live Financial Advisory, Prop. Rajiv Upadhyay

SEBI vide its order no. WTM/AB/WRO/WRO/21667/2022-23 dated November 30, 2022, has directed that below mentioned entity 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 along with depositing of balance amounts, if any, with SEBI as directed in para 22(a) and 22(e) of SEBI Order, whichever is later

NAME	PAN
Shri Rajiv Upadhyay, proprietor of Capital Live Financial Advisory	ADSPU1069J

This 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. Rajkumar Jain (Extension: 23457), Mr. Atish Agarwal (Extension: 26026)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of

National Stock Exchange of India Limited

Atish Agarwal
Senior Manager

National Stock Exchange of India

Final Order in the matter of M/s. Capital Live Financial Advisory, Prop. Rajiv Upadhyay

WTM/AB/WRO/WRO/21667/2022-23

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:

Noticees	PAN
Shri Rajiv Upadhyay, proprietor of Capital Live Financial Advisory	**ADSPU1069J**

In the matter of Unregistered Investment Adviser

---

1. The present proceedings emanate from a show cause notices dated July 01, 2021 and January 20, 2022 (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against Shri Rajiv Upadhyay, in his capacity as the sole proprietor of Capital Live Financial Advisory (hereinafter referred to as "**Capital Live**" and collectively along with Shri Rajiv Upadhyay as "**Noticees**") wherein it was *prima facie* alleged that the Noticees were 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 Noticees to show cause as to why suitable directions should not be issued against the Noticees under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992.

2. I note that the SCN alleges the following:

   a. SEBI had received a complaint dated January 04, 2016, against the Noticees. In the complaint, it was, *inter alia*, alleged that the complainant had made a payment of Rs. 46,000 for the purpose of advisory services to the Noticees but the Noticees did not provide proper service and the complainant suffered a loss of Rs. 25,000. The complainant also provided the screenshot of the website with address www.capitallive.co.in and the payments made to the Noticees.

b. The website www.capitallive.co.in was not active as on the date of SCN. From the archived pages of the said website, downloaded from web.archive.org, it was observed that the following was disclosed on the website:

> *"Capital live one of the most leading company in share and commodity market. Company provide good recommendation or tips in all segments like stock, cash, future and option along with mcx and ncdex our research is very well because we have a highly qualified and experienced expert team.*
>
> *Capital live is a company that has been completely dedicated in creating awareness among its investors on better investment strategies of the stock market and the equity market. We serve as a one stop destination for all trading techniques at the Indian stock market and follow the terms of growth and safety at all our trading transactions. We are a reputed stock market advisory company that offers unbiased stocking recommendations and information on the stock market and all our experts recommendations and predictions are for the betterment of our traders and subscribers. Our expert team works constantly and unfurl their expertise to benefit our investors involved in index options trading, equity options trading, call and put strategies, hedging with options to bring them in one common platform of capital growth. We also leave our trade predictions to the discretion of our receivers and they could opt to use the information or not.*
>
> *As a registered investment advisor we make it a point to offer reliable and working investment advice scrutinized completely at professional grounds. We perform grounded research become offering investment advice in trading stocks be it short term or long term investment pattern. All our recommendations offered before conducting the trade would be based on the performance of the investors or agencies and would be mediated through SMS in their registered phone. We are also available over messenger chat to offer the guidance our customers would need while performing the trade. We have a team of research analyst who are dedicated to performing keen technical and statistical analysis on all investment recommendations"*

c. As per the archived webpages of the website www.capitallive.co.in, various services which were offered are tabulated as under:

Sr. No.	***Name of Service***
1	*Stock Cash*
2	*Stock future*
3	*Nifty*
4	*Option*
5	*Advantage Stock*
6	*Triple Advantage*
7	*Stock Positional*
8	*Future Positional*
9	*BTST Cash*
10	*BTST-STBT Future*
11	*Bullion*
12	*Bullion Position*
13	*Advantage Commodity*
14	*Agri Tips*
15	*PCP (Point Covering Plan)*
16	*Premium Stock*
17	*Premium Future*
18	*Premium Option*
19	*Premium Bullion*
20	*Special Pack*
21	*Bonanza Pack*
22	*Stock Pack*

d. The following bank accounts were also disclosed on the website to receive payments:

Bank	***Name of Account Holder***	***Account No.***	***IFSC Code***	***Branch Name***
ICICI Bank	*Rajiv Upadhyay*	*657501501198*	*ICIC0006575*	*VVC Branch, Indore*
Axis Bank	*Rajiv Upadhyay*	*915010030253450*	*UTIB0000568*	*Vijay Nagar Branch, Indore*
Bank of India	*Rajiv Upadhyay*	*883610110007537*	*BKID0008836*	*Commerce House, Indore*
Bank of Maharashtra	*Rajiv Upadhyay*	*60186730662*	*MAHB0001765*	*South Tukoganj Indore*

e. The complainant had alleged that he made payments of Rs. 10,501, Rs. 5,000, Rs. 20,000 and Rs. 10,501 on November 13, 2015, November 14, 2015, November 19, 2015 and November 20, 2015, respectively, to the axis bank account number 915010030253450 of Capital Live. The aforementioned four transactions were also identified in the bank statement for account No. 915010030253450 received from Axis Bank. From the entries seen in the bank account statement for said Axis Bank account, it was inferred that the said account was used for receipt of fees from various entities for the purpose providing advisory services.

f. Further, from the bank account statements and account opening and KYC documents received from these four banks, it was observed that Mr. Rajiv Upadhyay opened all four bank accounts disclosed on the website www.capitallive.co.in and the total credits received in these four accounts was Rs. 24,85,490.26. The details of the bank accounts and the funds received in the same are as follows:

Bank Name	**Account Number**	**Statement period**	**Amount credited**
ICICI Bank	657501501198	June 30, 2015 to May 31, 2020	13,09,963.87
Axis Bank	915010030253450	July 06, 2015 to 31, 2020	7,48,057.39
Bank of India	8836101100075537	June 21, 2012 to 31, 2020	4,12,790.00
Bank of Maharashtra	60186730662	October 08, 2014 to 31, 2020	14,679.00p

g. It was observed that the Noticees were engaged in the activities of an 'investment adviser' as defined under Regulation 2(1)(m) of the IA Regulations, 2013. It was therefore alleged that the Noticees were engaged in providing unregistered investment advisory services without obtaining registration from SEBI as required under Section 12(1) of SEBI Act read with regulation 3(1) of IA Regulations, 2013 thereby violating the said provisions of the SEBI Act, 1992 and the IA Regulations, 2013.

h. The SCN had thus, called upon the Noticees to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B (1) of the SEBI Act, 1992 should not be issued against him for the alleged violations.

3. The SCN dated July 01, 2021 sent to the Noticees through Speed Post had returned undelivered. SCN dated January 20, 2022 sent to other two addresses of the Noticees by Speed Post was delivered at one of the addresses of the Noticees. However, no reply was received from the Noticees. In view of the same, the matter was placed before me on March 07, 2022 for granting personal hearing to the Noticees. The Noticees were granted an opportunity for personal hearing on May 17, 2022. The Noticees filed a reply dated May 07, 2022 in the matter. Thereafter, on the scheduled date of hearing, Shri Rajiv Upadhyay appeared for hearing virtually through Webex platform and made submissions. The submissions of the Noticees, *inter* alia, are as follows:

   a. Shri Rajiv Upadhyay is neither associated nor the sole proprietor of Capital Live. A proprietary concern has to be registered under Shops and Establishment Act or with tax authorities like Goods and Service Tax etc. and there is no material on record to prove that he was the proprietor of Capital Live.

   b. Shri Rajiv Upadhyay has never represented himself as an investment adviser or provided any kind of investment advisory. Most of the credits in his accounts are through his tuition fee, salary, incentives and consultancy fee that he earned through his employment with several companies and call centers, awareness, educational and motivational seminars conducted by him and home tuitions that he gave to students.

   c. Shri Rajiv Upadhyay got acquainted with the complainant in 2015 when he (Shri Rajiv Upadhyay) was working with M/s Capital Aim in its sales department. Shri Rajiv Upadhyay provided only general consultancy regarding financial or securities market to the complainant and the consultancy did not involve any investment advice. The complainant was a client of Capital Aim and took investment advice from Capital Aim.

   d. The website under the name http://capitallive.co.in has no relation with Shri Rajiv Upadhyay and there is no such website available on world wide web, therefore, the question of his account number mentioned on the website does not arise

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, reply received in the matter and submissions made by the Noticees during the personal hearing.

5. In the present matter, Shri Rajiv Upadhyay has contended that he is not associated with Capital Live and there is no material on record to show that he is the proprietor of Capital Live. In this regard, I note that in the present matter, after examination, the SCN was issued in the name of Capital Live and Shri Rajiv Upadhyay. The examination was conducted based on a complaint dated January 04, 2016 against an entity named Capital Live Financial Advisory Pvt. Ltd. In the screenshot of the website www.capitallive.co.in also, shared by the complainant, the name of the said entity was mentioned. The name of the said entity was searched in the MCA-21 database, hosted on the website of Ministry of Corporate Affairs to find out whether it was a company. From the MCA-21 database, it was found that no company with such name existed. With respect to association of Shri Rajiv Upadhyay with Capital Live, I note that during examination SEBI procured the KYC document, account opening forms of the bank accounts mentioned on the website www.capitallive.co.in for receiving the consideration for services offered on the said website. The documents received from the respective banks revealed that the aforementioned bank accounts belonged to Shri Rajiv Upadhyay. The SCN observed that four different bank accounts belonging to Shri Rajiv Upadhyay were mentioned on the website www.capitallive.co.in. The said accounts were held with ICICI Bank, Axis Bank, Bank of India and Bank of Maharashtra, respectively. The fact that there was no company with the name Capital Live Financial Advisory Pvt. Ltd. and the fact that bank accounts of Shri Rajiv Upadhyay were mentioned on the website of Capital Live gives rise to a reasonable inference that Capital Live is nothing but either a trade name used by Shri Rajiv Upadhyay or is a proprietorship firm of Shri Rajiv Upadhyay. Shri Rajiv Upadhyay has not contended that the said

accounts do not belong to him. Now, it has not been explained by Shri Rajiv Upadhyay that if he was not the person behind the website www.capitallive.co.in, then why were his bank accounts mentioned on the said website, for receiving the fee towards services being offered through the website. It defies logic that someone will go create a website to offer advisory services and for receiving the consideration for such services give the bank account details of Shri Rajiv Upadhyay, thereby, depriving himself of the benefits of such activities. The complainant also stated in his complaint that he made payments to Capital Live, however, from the screenshots of the fund transfer shared by the complainant and the bank account statement of Shri Rajiv Upadhyay's bank account held with Axis Bank, it is noted that the money was credited to the Axis bank account of Shri Rajiv Upadhyay. These facts prove that the website www.capitallive.co.in was being run by Shri Rajiv Upadhyay. In this regard, Shri Rajiv Upadhyay has contended that a proprietary concern has to be registered under Shops and Establishment Act or with tax authorities such as those for Goods and Services Tax etc. and there is no such registration document available on record which shows that he is the proprietor of Capital Live. In this regard, I note that there are various statutory requirements, including registration requirements, pertaining to proprietorships. If any person, who is required to fulfil such requirements, does not do so, then such person is in violation of law. In that case, the said person cannot use the violation as a defence regarding violation of provisions of other laws. The fact that Shri Rajiv Upadhyay has not obtained registration to carry on alleged activities under the banner of Capital Live and offer services through the website www.capitallive.co.in, is of no avail to him. Whether Shri Rajiv Upadhyay registered his proprietorship concern or not is not of importance in these proceedings, what is important is to find out whether the alleged activities were being carried out through the website www.capitallive.co.in and who was the person behind such activities and whether such activities were undertaken after obtaining proper registration as prscribed under relevant provisions of law. It is clear from the discussion above that Shri Rajiv Upadhyay was running the website www.capitallive.co.in and carrying out the alleged activities. In view of the above, I find that Shri Rajiv Upadhyay was running the website www.capitallive.co.in and used the trade name Capital Live to carry out the said alleged activities and offer services through the website www.capitallive.co.in. I also note that in the four bank accounts mentioned on the website www.capitallive.co.in for receiving consideration for the services offered on the said website, Rs. 24,85,490.26 were received, the same has been dealt later in paragraph 14.

6. 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;"

7. Further, Regulation 2(1)(l) of IA Regulations, 2013 provides 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.capitallive.co.in, *inter alia*, claimed as follows:

   "Capital live one of the most leading company in share and commodity market. Company provide good recommendation or tips in all segments like stock, cash, future and option along with mcx and ncdex our research is very well because we have a highly qualified and experienced expert team.

   We serve as a one stop destination for all trading techniques at the Indian stock market and follow the terms of growth and safety at all our trading transactions. We are a reputed stock market advisory company that offers unbiased stocking recommendations and information on the stock market and all our experts recommendations and predictions are for the betterment of our traders and subscribers. Our expert team works constantly and unfurl their expertise to benefit our investors involved in index options trading, equity options trading, call and put strategies, hedging with options to bring them in one common platform of capital growth. We also leave our trade predictions to the discretion of our receivers and they could opt to use the information or not.

As a registered investment advisor we make it a point to offer reliable and working investment advice scrutinized completely at professional grounds. We perform grounded research become offering investment advice in trading stocks be it short term or long term investment pattern. All our recommendations offered before conducting the trade would be based on the performance of the investors or agencies and would be mediated through SMS in their registered phone. We are also available over messenger chat to offer the guidance our customers would need while performing the trade. We have a team of research analyst who are dedicated to performing keen technical and statistical analysis on all investment recommendations"

9. From the above, I note that the website www.capitallive.co.in claimed that Capital Live is a stock market advisory company and offered recommendations and tips in *stock, cash, future and option, MCX, NCDEX* segments. The website also claimed that Capital Live is a registered investment advisor and offered investment advice in trading stocks for short term as well as long term. The claim that Capital Live was registered with SEBI turned out to be false. The website also offered various packages on monthly, bimonthly, quarterly, half yearly and yearly basis. The pricing details of some of the services and packages offered on the website are as follows:

Sr. No.	**Name of Service**	**For 1 month**	**For 2 months**	**For 3 months**	**For 6 months**	**For 12 months**
1	Stock Cash	NA	11,000	15,000	25,500	42,500
2	Stock future	NA	13,500	18,500	30,500	50,500
3	Nifty	NA	10,000	13,500	21,500	35,500
4	Option	NA	11,000	15,000	25,500	42,500
5	Advantage Stock	10000	17,500	25,500	45,500	81,000
6	Triple Advantage	16500	30,500	41,500	72,500	1,25,000
7	Stock Positional	NA	15,500	22,500	35,500	60,000
8	Future Positional	10500	16,500	22,500	41,000	75,500
9	BTST Cash	10500	18,500	25,500	43,500	65,500
10	BTST-STBT Future	11500	16,500	23,500	43,500	65,500
11	Bullion	NA	15,500	20,500	35,500	61,500
12	Bullion Position	15500	25,500	36,500	67,500	1,20,000
13	Advantage Commodity	15500	25,500	35,500	62,500	1,10,000
14	Agri Tips	NA	11,000	15,000	25,500	42,500
16	Premium Stock	10500	17,500	25,500	45,500	75,000
17	Premium Future	10500	17,500	25,500	42,500	75,000
18	Premium Option	11500	18,500	25,500	45,500	85,000
19	Premium Bullion	15000	25,500	35,500	65,500	1,10,000
21	Bonanza Pack	30000	51,000	81,000	1,40,000	2,25,000
22	Stock Pack	NA	20,500	NA	49,500	81,000

10. I also note that risk profiling of clients through a questionnaire was also being done through the website. In view of the above, I find that the services and packages offered on the website www.capitallive.co.in falls squarely under the definition of 'investment advice' as provided under Regulation 2(1)(l) of the IA Regulations, 2013.

11. Further, as per the payment page on the website www.capitallive.co.in, I note that in order to make payments for availing the services offered on the website, the following bank account details were provided on the website:

Bank	**Name of Account Holder**	**Account No.**	**IFSC Code**	**Branch Name**
ICICI Bank	Rajiv Upadhyay	657501501198	ICIC0006575	VVC Branch, Indore
Axis Bank	Rajiv Upadhyay	915010030253450	UTIB0000568	Vijay Nagar Branch, Indore
Bank of India	Rajiv Upadhyay	883610110007537	BKID0008836	Commerce House, Indore
Bank of Maharashtra	Rajiv Upadhyay	60186730662	MAHB0001765	South Tukoganj Indore

12. In view of the fact that investment advice was being offered through the website www.capitallive.co.in and the packages mentioned on the website www.capitallive.co.in also had prices mentioned therein and payment details were also provided on the website, and the said details were of the bank accounts of Shri Rajiv Upadhyay, I find that 'investment advice' as provided under Regulation 2(1)(l) of the IA Regulations, 2013, *in lieu* of consideration, was being offered by Shri Rajiv Upadhyay through his website www.capitallive.co.in.

13. I also note that the complainant in his complaint stated that he paid Rs. 46,000 to the Axis Bank account number 915010030253450. The said bank account was also mentioned on the website www.capitallive.co.in in which consideration for the services offered through the website could be paid. The screenshots provided by the complainant along with his complaint showed that said payments were made during the period November 13, 2015 to November 20, 2015. The corresponding

credits were noticed in the bank account statements of the Axis Bank account (a/c no. 915010030253450) of Shri Rajiv Upadhyay, as received from Axis Bank. Shri Rajiv Upadhyay has not disputed the fact that funds were received from the complainant, however, he has contended that he provided only general consultancy to the complainant and the consultancy did not involve any investment advice. Shri Rajiv Upadhyay has also contended that the complainant was a client of Capital Aim and took investment advice from Capital Aim. In this regard, I note that firstly, it is incomprehensible that the complainant, who, according to Shri Rajiv Upadhyay, was already getting investment advice from Capital Aim, would seek 'general consultancy' regarding financial and securities market from Shri Rajiv Upadhyay, more so on payments basis. Secondly, the complainant has stated that he made payment to Capital Live through the Axis Bank account. These payments are reflected in the Axis Bank account of Shri Rajiv Upadhyay. Shri Rajiv Upadhyay has not denied these credits, thereby, giving rise to reasonable inference that Shri Rajiv Upadhyay gave investment advice to the complainant *in lieu* of consideration from the complainant. Thus, the fact that the complainant was a client of Capital Aim, doesn't make any difference as the records clearly show that payments were made by the complainant to Shri Rajiv Upadhyay for investment advice and not to Capital Aim. Therefore, I find that the contention raised by Shri Rajiv Upadhyay in this regard is untenable.

14. During examination, SEBI also procured the transaction statements of the aforementioned bank accounts of Shri Rajiv Upadhyay held with Bank of India, Axis Bank, ICICI Bank and Bank of Maharashtra. It was noted that the credits received in the said bank accounts were as follows:

Bank Name	**Account Number**	**Statement period**	**Amount credited**
ICICI Bank	657501501198	June 30, 2015 to May 31, 2020	13,09,963.87
Axis Bank	915010030253450	July 06, 2015 to May 31, 2020	7,48,057.39
Bank of India	8836101100075537	June 21, 2012 to May 31, 2020	4,12,790.00
Bank of Maharashtra	60186730662	October 08, 2014 to May 31, 2020	14,679.00
		Total	**24,85,490.26**

15. From the aforesaid facts, I find that Shri Rajiv Upadhyay was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities

or investment products, through his website www.capitallive.co.in *in lieu* of consideration. I note that if an entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client *in lieu* of consideration, including entities which are holding themselves out as investment advisers, are covered by the definition of "Investment Adviser" as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, Rs. 24,85,490.26 were received in Shri Rajiv Upadhyay's four bank accounts. Hence, I find that Shri Rajiv Upadhyay 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.

16. 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:"*

17. 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 have 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.

18. 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:

    a. 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;

    b. 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:
        i. 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;

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

iii. 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

c. 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.

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

20. As noted above, Rs. 24,85,490.26 were received in the four bank accounts of Shri Rajiv Upadhyay held with Bank of India, Axis Bank, ICICI Bank and Bank of Maharashtra, *in lieu* of the unregistered investment advisory activities.

21. I also note that in the case of Shri C. Paranitharan and Others and Trend Market Advisory Services, SEBI had passed orders dated July 05, 2022 and July 07, 2022, respectively, *inter alia* directing the Noticees therein to refund the fees or consideration received from investors in respect of their unregistered investment advisory activities. In the respective appeals filed against these orders by the respective Noticees, Hon'ble Securities Appellate Tribunal vide common order dated September 21, 2022 *inter alia* directed the appellants therein to deposit the balance amount after making refunds to investors, with SEBI. It was also

directed that the balance amount deposited with SEBI shall be kept in escrow account for a period of one year and be distributed to any claimants and thereafter, the remaining amount, if any, will be deposited in the Investor Protection and Education Fund.

Directions

22. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4) and 11B read with of Section 19 of the SEBI Act, 1992, hereby direct that:

   a. The Noticees shall within a period of three months from the date of this order, refund the money received from any clients/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 clients/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. After completing the refund as directed in para 22(a) above, within a period of 15 days, the Noticees shall file a report detailing the amount refunded to SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai - 400051. The report should be duly certified by an independent Chartered

Accountant and indicate the amount, mode of payment by banking transactions, name of the parties, communication address, mobile numbers and telephone numbers etc.;

e. The remaining balance amount shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/complainants/investors who were availing the investment advisory services from the Noticees. Thereafter, remaining amount if any will be deposited in the Investor Protection and Education Fund maintained by SEBI;

f. The Noticees are restrained 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/ depositing balance amount with SEBI, 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 and depositing balance amount with SEBI, as directed in this order, from the bank accounts of the Noticees;

g. 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 along with depositing of balance amounts, if any, with SEBI as directed in para 22(a) and 22(e) above, whichever is later;

h. Upon submission of report on completion of refunds to complainants/ investors to SEBI and deposit of the balance money with SEBI, if any, the direction at para 22(f) above shall cease to operate within 15 days thereafter;

i. The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 22(g) 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.

23. The direction for refund and depositing the balance amount with SEBI, as given in para 22(a) and 22(e) 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.

24. This order comes into force with immediate effect.

25. 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: November 30, 2022 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA