National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/54847	Date: December 15, 2022
Circular Ref. No: 199/2022	

To All NSE Members

Sub: **Final Order in the matter of Swastika Services**

SEBI vide its order no. WTM/AB/WRO/WRO/22065/2022-23 dated December 15, 2022, has directed that the below mentioned entity is debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of six(6) months from the date of SEBI Order or till the expiry of six(6) months from the date of completion of refund to clients / investors along with depositing of balance amount, if any, with SEBI, as directed in paragraph 16(a) and 16(e) of SEBI Order, whichever is later.

Sr. No.	Name of Entity	PAN
1	Swastika Services (Proprietor: Shri Ms. Archana Sharma)	GPJPS4532B

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.

Confidential

National Stock Exchange of India

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

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For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

WTM/AB/WRO/WRO/22065/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Sl. No.	Name of the Noticees	PAN
1.	Swastika Services (Proprietor: Shri Ms. Archana Sharma)	GPJPS4532B

In the matter of Unregistered Investment Advisory by Swastika Services

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Background:

1. Pursuant to receipt of complaint dated August 22, 2017 against Swastika Services, SEBI conducted an examination in relation to alleged activities of unregistered investment advisory being carried out by it. Upon completion of examination, a show cause notice dated January 24, 2022 (hereinafter referred to as "**SCN**") was issued to Swastika Services, Proprietor Ms. Archana Sharma (hereinafter collectively referred to as "**the Noticees**") whereby the Noticees were called upon 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 them for the alleged violations of the provisions of Section 12(1) of the SEBI Act, 1992 and Regulation 3(1) of SEBI (Investment Advisors) Regulations, 2013 (hereinafter referred to as "**IA Regulations, 2013**").

2. The SCN was served through Speed Post. The Noticees did not file any reply to the SCN. Subsequently, the file was placed before me on March 04, 2022 for granting a hearing date, in order to comply with the principles of natural justice and the Noticees were granted an opportunity of personal hearing on June 02, 2022. The Noticees failed to attend the hearing and did not seek any adjournment to the same. In view of the same, the hearing was concluded *qua* the Noticees.

Consideration of submissions and findings:

3. I have considered the allegations made in the SCN, along with the findings of the examination by SEBI stated therein and material available on record.

4. In this regard, I note that the definition of Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013 provides as follows:

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

Further, Regulation 2(1)(l) of IA Regulations, 2013 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;"

5. The SCN alleged that the Noticees were carrying out unregistered investment advisory activities through the website http://swastikaservices.com , a copy of a page of the website was attached in the complaint. I note that the said website is not active as of today. However, from the archive of the webpages, as available on web.archive.org, as available on record, I note that the following was disclosed on the website:

> "Stock tips by experts, commodity trading tips provider MCX tips on mobile."

From the copy of the website provided by the complainant, I note that Swastika services used SEBI logo on its website, giving a false and misleading impression to the investors that they are SEBI approved/ registered entity. I also note that in the section titled "What our customers say about us" the following *inter alia* are mentioned:

- "Masters of technical analysis is what I call the research team of Swastika Services. Apart from accuracy, the timing of their call is just right for an intraday trader for easy entry and exit with a strict stop loss!..."
- "Free equity tips on mobile."
- "Best stock tip provider in Indore"

6. From the above, I find that the Noticees, through the website http://swastikaservices.com were providing stock recommendations to individual clients. Therefore, in my view they were offering investment advice to the clients through the website http://swastikaservices.com. From the copy of archived webpages as available on record, I also note that the following services were offered through the said website:

    a) Stock Tips
    b) Stock Future Tips
    c) Nifty Future Tips
    d) Option Tips
    e) Commodity Tips
    f) Agri Tips
    g) Currency Tips
    h) Premium Pack
    i) Rhodium Pack
    j) Profit Call

7. In the present matter, investment advisory services were being offered to clients by the Noticees *in lieu* of consideration, which was detailed in the complaint by the complainant. Further, as per the payment tab of archive webpages of the website, I note that in order to make payments for availing the services of the Noticees, details of bank account and a Payu money button was provided.

Moreover, the complainant had also provided the details of the bank account to which he had transferred money in order to avail the purported service of the Noticees. The details of the bank account of Swastika Services provided by the complainant was as follows:

Name: Swastika Services
Account. No :144 05001053
Branch: Indore
RTGS/NEFT IFSC Code: ICIC0001441

In view of the fact that payment options and payment gateway was provided on the website http://swastikaservices.com, I find that the Noticees were giving investment advice *in lieu* of consideration and were thus acting as 'investment adviser' in terms of Regulation 2(1)(m) of the IA Regulations, 2013.

8. During examination, SEBI procured the KYC documents, Account Opening Forms and bank statement of the aforesaid bank account and PayU Money Account. The analysis of the said documents revealed that the aforesaid bank account belonged to Ms. Archana Sharma, proprietor of Swastika Services. As per the Account opening form for ICICI Bank Account. No: 144105001053, the said bank account was operated by Ms. Archana Sharma and she was the sole proprietor of Swastika Services. The examination of the aforesaid bank account of Swastika Services revealed the following:

a) During the period from July 11, 2017 to April 21, 2018, credit of Rs. 37,02,968 has been received in the ICICI Bank Account. No: 144105001053. The said account was closed as on November 19, 2018.

b) Out of the above-mentioned amount, an amount of Rs. 3,90,226/- has been received through PayU money gateway.

c) As mentioned by the complainant, there were 2 credit entries in ICICI Bank statement of bank account no: 144105001053 owned by Swastika Services, dated July 11,2017 and July 20,2017, wherein mobile number mentioned in narration column of statement matches with the complainant mobile number i.e, 8527691222.

9. It is observed that the amount paid by the complainant and reflected in the bank account stated on the website http://swastikaservices.com, is consideration

paid for availing investment advisory services as offered by the Noticees through the website http://swastikaservices.com. Further, based on examination of bank account statement of the Noticee, it is observed that there are large number of credits from several other individual investors and I find that the same could have also been paid towards availing investment advisory services offered by the Noticees.

10. I note that if an entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client *in lieu* of consideration, including entities which are holding themselves out as investment advisers, will be covered by the definition of "Investment Adviser" as given in Regulation 2(1)(m) of the IA Regulations, 2013. I note that the Noticees were acting as investment adviser as held in para 6 above and were providing investment advisory services to clients for monetary consideration. I therefore find that Noticees were acting as investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

11. I also note that, it is imperative that any person carrying out investment advisory activities has to 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:"*

12. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 has been

framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under Regulation 3(1) of the IA Regulations, 2013, which, inter alia, provides that, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

13. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations, 2013:

(i) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 along with requisite non-refundable application fee;

(ii) The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:

a) A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance,

accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

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

c) Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

(iii) Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

14. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticees were holding itself out and were acting as an investment adviser, although the Noticees were not registered with SEBI in the capacity of investment adviser. Hence, the Noticees are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013. As noted above, during the period from July 11, 2017 to April 21, 2018, credit

of Rs. 37,02,968 has been received in the ICICI bank account no: 144105001053 of the Noticees *in lieu* of unregistered investment advisory services.

15. I 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 SAT vide common order dated September 21, 2022 *inter alia* directed the appellants there into 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:

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

(a) The Noticees (Swastika Services, proprietor: Ms. Archana Sharma) shall within a period of three (3) months from the date of this Order, refund the money received from any investors/clients, as fees or consideration or in any other form, in respect of its unregistered investment advisory activities.

(b) The Noticees shall, within 15 days from the date of this Order, 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. A period of two (2) months from the date

of the publication of the public notice shall be provided to the investors/clients for submitting their claims.

(c) 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.

(d) Within a period of 15 days after completing the refund as directed in para 16(a) above, the Noticees shall file a report with SEBI detailing the amount refunded to investors / clients, which should be addressed to the "Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051". The above mentioned report should be duly certified by an independent Chartered Accountant and should indicate the amount of refund, mode of payment by bank transactions, name of the parties, communication address, mobile / telephone numbers, etc.

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

(f) The Noticees 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 refund / depositing balance amount with SEBI, as directed above. Further, banks are directed to allow debit from the bank accounts of the Noticees, only for the purpose of making refund to the clients/ investors who were availing the investment advisory services from the Noticees and for depositing balance amount with SEBI, as directed in this Order.

(g) The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period

of six (6) months from the date of this Order or till the expiry of six (6) months from the date of completion of refund to clients / investors along with depositing of balance amount, if any, with SEBI, as directed in paragraph 16(a) and 16(e) above, whichever is later.

(h) Upon submission of report on completion of refund to clients / investors to SEBI and deposit of the balance amount, if any, with SEBI, the direction at paragraph 16(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 paragraph 16(g), 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.

17. The direction for refund to clients / investors and depositing the balance amount with SEBI, as given in paragraph 16(a) and 16(e) above, shall not preclude the clients / investors to pursue any other legal remedy 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.

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

19. A copy of this Order shall be served upon the Noticees, recognized Stock Exchanges, Depositories, Banks and Registrar and Transfer Agents to ensure that the directions given above are strictly complied with.

-Sd-

Date: December 15, 2022
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA