# National Stock Exchange of India

## Circular

| Department: Investigation | |
|---|---|
| Download Ref No: NSE/INVG/54848 | Date: December 15, 2022 |
| Circular Ref. No: 200/2022 | |

To All NSE Members

**Sub**: **Final Order in the matter of M/s. All Gainers Research and Brokerage Firm, Prop. Anand Kand Mishra**

SEBI vide its order no. WTM/AB/WRO/WRO/21993/2022-23 dated December 15, 2022, has directed that the below mentioned entity is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of six (6) months from the date of the order or till the expiry of six (6)months from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in para 16(a) and 16(e) of SEBI order, whichever is later.

| Sr. No. | Name of Entity | PAN |
|---|---|---|
| 1 | Mr. Anand Kand Mishra - Prop. of M/s. All Gainers Research and Brokerage Firm | AVFPM1559G |

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. Joshua Mendes (Extension: 24549), 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**

WTM/AB/WRO/WRO/21993/2022-23

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**FINAL ORDER**

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

**In respect of:**

| Noticee no. | Noticee Name | PAN |
|---|---|---|
| 1 | Mr. Anand Kand Mishra<br><br>Prop. of M/s. All Gainers Research and Brokerage Firm | AVFPM1559G |

**In the matter of Unregistered Investment Advisory by M/s. All Gainers Research and Brokerage Firm.**

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1. On the basis of complaint received against M/s. All Gainers Research and Brokerage Firm, SEBI conducted an examination in relation to the alleged activities of unregistered investment advisory being carried out by M/s. All Gainers Research and Brokerage Firm. Upon examination, a show cause notice dated July 31, 2021 (hereinafter referred to as "**SCN**"), came to be issued to Mr. Anand Kand Mishra, Proprietor M/s. All Gainers Research and Brokerage Firm, a sole proprietorship firm (hereinafter referred to as "**the Noticee**"), whereby the Noticee was called upon to show cause as to why appropriate directions under Sections 11(1), 11(4) and 11B(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**"), should not be issued against them for the alleged violation of the provisions of Section 12(1) of the SEBI Act. 1992 and Regulation 3(1) of SEBI (Investment Advisors) Regulations, 2013 ('**IA Regulations, 2013**').

2. The SCN was served upon the Noticee through Speed Post. An opportunity of personal hearing was granted to the Noticee on April 11, 2022. The Notice for the personal hearing was also delivered through Speed Post. On the scheduled date

of hearing, none appeared on behalf of the Noticee, neither any request for adjournment was received. I note that no reply has been filed by the Noticee.

3. The SCN alleged that the Noticee was carrying out unregistered investment advisory activities through the website 'www.allgainers.in'. I note that the website is inactive as on date, but from the copy of the archived webpages at 'web.archive.org', as available on record, I note that the following was disclosed on the website:

> *"All Gainers research & brokerage firm is your prime key to open gates of Indian stock markets and gather the precise and timely information for profitable investments and trading. All Gainers research & brokerage firm is formulated and updated with timely information and it is the premier source for research on Indian Stock Markets."*
>
> *"We satisfied our clients with maximum profit, and deals them with greater responsibility, we trust in long term relationships with our clients. Our Strength is to deal excellently with our clients in negative situation and feel secure trading with us. This is our thought, with this we can surely progress"*

4. Services being offered by the Noticee as gathered from the contents of its website are as follows:

> *"Stock Tips, Stock Futures Tips, Nifty Futures Tips, Options – call and Put Tips, Delivery Pack, Equity premium tips, Commodity Tips, Agri Commodity Tips, MCX Premium Tips, NCDEX Premium Tips, PCG Pack, COMEX Tips, Currency Tips. "*

| ***Sr. No.*** | ***Name of Service*** |
|---|---|
| *1.* | *Stock Cash Intraday* |
| *2.* | *Stock Option Intraday* |
| *3.* | *Stock Future Intraday* |
| *4.* | *Index Basic* |
| *5.* | *Stock Cash Premium* |
| *6.* | *Stock Future Premium* |
| *7.* | *Commodity Basic Metal* |
| *8.* | *Commodity Premium* |
| *9.* | *Index Premium* |
| *10.* | *HNI Pack (Equity)* |
| *11.* | *HNI Pack (Commodity)* |
| *12.* | *Commodity Combo* |
| *13.* | *LRF Service* |
| *14.* | *Ultra Dynemic Service* |
| *15.* | *Dymond Service* |
| *16.* | *Jackpot Service* |

5. I not that the following Payment details were mentioned on the website –

   *"Account Name: Allgainers research firm*
   *Account No. 50200030587744*
   *NEFT / IFSC Code: HDFC0002400*
   *Branch: Makronia"*

6. From reading of the aforesaid contents of the website, it is abundantly clear that the owner and administrator of the website 'www.allgainers.in' was engaged in the business of offering stock tips to clients for consideration.

7. During examination by SEBI, the bank statements, KYC and Account Opening Forms of Bank A/c no. 50200030587744 were procured from HDFC Bank. On perusal of the Account Opening Form, I find that M/s. All Gainers Research & Brokerage firm is a proprietorship firm and Mr. Anand Kand Mishra is the proprietor. The said proprietorship firm is registered under the Madhya Pradesh Shops and Establishment Act, 1958. The District Labour Officer, Sagar had issued a Registration Certificate dated February 24, 2018 under the Madhya Pradesh Shops and Establishment Act, 1958, to 'All Gainers Research & Brokerage firm', whose proprietor is mentioned as Mr. Anand Kand Mishra. Further, from the account statement, I find that multiple credit transactions were done by various individuals into the said account. Total amount credited in the said bank account from April 17, 2018 to September 19, 2018, is Rs. 12,08,274.00 /-. From the Account opening Form of HDFC Bank A/c., SEBI noticed another Bank account in the name of Mr. Anand Kand Mishra, bearing account no. 915020062143900 maintained with Axis Bank. On perusal of KYC, Account Opening Form and account statement of the said bank account, I find that a sum of Rs. 50,01,932/- was credited into the said bank account from various entities during the period from April 11, 2018 to October 1, 2018. The narration of the transactions read as "Arihant Futures, Investment etc".

8. Therefore, from the contents of the website 'www.allgainers.in', it is clear that 'All Gainers Research & Brokerage firm' was engaged in offering investment advisory services. Further, from the bank statements of aforementioned HDFC Bank A/c

and Axis Bank A/c., it is observed that there are large number of credit entries from several individuals. In view of the above, I find that the Noticee was engaged in offering investment advisory services to clients/ investors for a consideration, without obtaining registration from SEBI. I also note that despite being asked to show cause, the Noticee has ignored to file reply and explain the source of the credit entries in the aforesaid bank accounts. Thus, I am inclined to hold that the credit entries in the said bank accounts aggregating to an amount of Rs. 62,10,206/-, were funds received by the Noticee from clients/ investors while offering the unregistered investment advisory services.

9. 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, 62,10,206/- were received in the aforesaid bank accounts whose beneficiary was Mr. Anand Kand Mishra. As noted in the previous paragraph, the payments received in the bank account of the Noticee, were in lieu of the investment advisory services provided by Mr. Anand Kand Mishra. Hence, I find that All Gainers Research and Brokerage Firm and its proprietor Mr. Anand Kand Mishra was engaged in the business of providing investment advice to its clients, for consideration, and thus, acting as investment advisers, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

10. 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:"*

11. 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.

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

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

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

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

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

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

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

13. The activities engaged in by the Noticee, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticee was acting as an Investment Adviser, although the Noticee was not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticee without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act, 1992 read with regulation 3(1) of the IA Regulations, 2013.

14. 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.

15. From the material available on record, I note that the examination in the matter was initiated on the basis of a complaint. I also note that an aggregate amount of Rs. 62,10,206/-, has been collected by the Noticee in the bank account, by providing unregistered investment advisory services, still needs to be refunded to the investors/ clients.

**DIRECTIONS**

16. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections11(1), 11(4) and 11B(1) read with of Section 19 of the SEBI Act, 1992, hereby direct that:

a) The Noticee shall, within a period of three months from the date 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 Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this order;

c) The repayments to the clients/ complainants/ investors shall be effected only through banking channels (and no cash transfers), which ensures audit trails to identify the beneficiaries of repayments;

d) After completing the refund as directed in para 16 (a) above, within a period of 15 days, the Noticee 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, name of the parties refunded, communication address, mobile numbers and telephone numbers etc.;

e) The remaining balance amount that could not be refunded to the clients/ investors, 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 Noticee. Thereafter, remaining amount, if any, will be deposited in the Investors Protection and Education Fund maintained by SEBI;

f) The Noticee is restrained from selling their 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 not to allow any debits, except for the purpose of making refunds to the clients/investors/complainants who were availing the investment advisory services from the Noticee and depositing balance amount with SEBI, as directed in this order, from the bank accounts of the Noticee;

g) The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, 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 refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in para 16(a) and 16(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 16(f) above shall cease to operate within 15 days thereafter;

i) The Noticee shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 16(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.

17. The direction for refund and depositing the balance amount with SEBI, as given in para 16 (a) and 16(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/ authority of competent jurisdiction.

18. This order comes into force with immediate effect.

19. A copy of this order shall be sent to the Noticee, recognized Stock Exchanges, the banks, Depositories and Registrar and Transfer Agents of Mutual Funds 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**