National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55341	Date: January 23, 2023
Circular Ref. No: 13/2023	

To All NSE Members,

Sub: Final Order in the matter of Agrich Traders

This is with reference to NSE Circular No. NSE/INVG/46683 dated December 16, 2020, in respect of SEBI Order No. WTM/MPB/IMD/WRO/ILO/156/2020 dated December 16, 2020, for the below entity:

Sr. no.	Name of the entity	PAN
1.	Agrich Traders – Proprietor: Mr. Prakash Shyamlal Rathod	CTLPP8213L

SEBI vide its order no. WTM/SM/WRO/WRO/23094/2022-23 dated January 23, 2023 has hereby debarred the above entity from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 6 (six) months from the date of this Order or till the expiry of 6 (six) months from the date of completion of refunds to investors / clients along with depositing of balance amount, if any, with SEBI, as directed in paragraphs 36.1 and 36.5 order, whichever is later.

The order comes 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. Ritik Bhriegu (Extension: 23020), 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

ANNEXURE: Final Order in the matter of Agrich Traders

WTM/SM/WRO/WRO/23094/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In respect of:

Sl. No.	Name of the Noticee	PAN
1.	**Agrich Traders – Proprietor: Mr. Prakash Shyamlal Rathod**	**CTLPP8213L**

In the matter of Agrich Traders

Background

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a complaint vide e-mail dated May 6, 2020, wherein it was alleged that Agrich Traders (hereinafter referred to as '***firm***') was providing investment advisory services from a website called *www.agrichtraders.com* without obtaining registration from SEBI. On the basis of such complaint, SEBI carried out a preliminary examination to ascertain whether unregistered investment advisory activities are being carried out by the *firm*.

2. It is noted in the course of the said preliminary examination that the website *www.agrichtraders.com* was active at that time during which the *firm* had presented itself as an investment adviser / tips provider. The website of the *firm* had also contained information that it was offering packages in stocks trading/investment tips in cash, futures and options segments to its clients as part of its investment advisory services.

3. It was observed from the website of the *firm* that under the head payment details, the firm was providing its bank details via SMS. Upon examination, it was found that the *firm* had an account with IDFC First Bank bearing account number 10XXXXXXX96 and another account with Bank of Baroda bearing account number 31XXXXXXXXXX26. It was noted during the examination that the *firm* is a sole proprietorship firm registered by Mr. Prakash Shamlal Rathod (hereinafter referred to as "**PSR**") under the Madhya Pradesh Shops and Establishments Act, 1958 on September 27, 2019.

4. It was observed during the examination that the *firm* was not registered with SEBI to act as an investment adviser in the securities market.

5. I note from the material available on record that the pricing details of the fees charged for various investments products being offered by the *firm* as mentioned on the aforementioned website were as following:

Table No. 1: Subscription plans

Product	Monthly in INR	Quarterly in INR	Half-Yearly in INR	Yearly in INR
MCX Bullion	24,999	59,999	94,999	1,49,999
MCX Base Metal	19,999	44,999	64,999	99,999
MCX Energy	14,999	34,999	59,999	84,999
Stock Cash	14,999	34,999	59,999	74,999
Stock Future	19,999	49,999	84,999	1,29,999
Stock Option	14,999	34,999	59,999	74,999
Premium Cash	24,999	54,999	99,999	1,49,999
Premium Future	29,999	64,999	1,24,999	1,99,999
Premium Option	24,999	49,999	74,999	1,24,999
Growth Plan	NA	2,50,000	NA	4,50,000
Master Trading Plan	NA	4,50,000	7,50,000	11,00,000

6. A preliminary examination into the abovementioned two bank accounts which were opened in the name of the *firm* showed that the *firm* has *prima-facie* collected a total sum of INR 1,26,28,408/- in the aforesaid two bank accounts by way of numerous credit transactions during the period from October 10, 2019 to December 14, 2020.

7. In the light of the fact that the *firm* was continuously luring gullible investors by offering various services and making unreasonable and outlandish claims of giving

highly accurate recommendations and consistent profits in any market through the aforesaid website and monies were continuously being collected from the investors in the aforesaid two bank accounts by offering them various investment advisory packages in an unauthorized manner, it was deemed necessary by SEBI to take urgent and preventive action in this matter to stop the *firm* from collecting any more fees from the public and from indulging in such unauthorized investment advisory activities. Therefore, an *ex-parte ad Interim Order* dated December 15, 2020 (hereinafter referred to as "***Interim Order***") under Sections 11, 11(4), 11B(1) and 11D read with Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") was passed wherein the above activities of the *firm* were *prima facie* held to be in violation of the provisions of Section 12(1) of the SEBI Act read with regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**").

8. On the basis of the aforesaid findings from the preliminary examination, the evidence gathered during the examination and considering the sensitive nature of the allegedly illegal advisory activities being undertaken by the *firm*, in order to protect the interest of investors in the securities market and, as a preventive measure, *Interim Order* was passed to prevent the *firm* from carrying on those illegal investment advisory services both directly or indirectly, which were *prima-facie* found to be being undertaken in violation of the provisions of SEBI Act as well as IA Regulations. Consequently, the following directions were issued against the *firm* in the aforesaid *Interim Order*: -

"*27.1 Agrich and its proprietor Mr. Prakash Shyamlal Rathod are directed to:*

i. 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 matter whatsoever, until further orders.

ii. Not to divert any funds raised from investors, kept in bank accounts and/or in their custody until further orders.

iii. Not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.

iv. Immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., physical or digital in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.

v. Not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.

vi. To provide a full inventory of all assets held in his name, 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. To submit the number and details of clients who have availed their investment advisory services and to submit details of fees collected from each such client, immediately but not later than 5 working days from the date of receipt of this order.

27.2. If Agrich or its proprietor Mr. Prakash Shyamlal Rathod have any open positions in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. Agrich/its proprietor Mr. Prakash Shyamlal Rathod are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

27.3. IDFC First Bank and Bank of Baroda wherein Agrich (IDFC First Bank Account Number: 10XXXXXXX96 and Bank of Baroda Account Number: 31XXXXXXXXXX26 is holding bank accounts are directed not to allow any debits/ withdrawals from and not to allow any credits to the said accounts, without the permission of SEBI. The payment gateway PhonePe wherein Agrich is holding an *account shall be deactivated till further directions. The Banks and payment gateway are directed to ensure that all the above directions are strictly enforced.*

27.4. The Depositories are directed to ensure, till further directions, that they neither permit any debits nor any credits in the demat account held by:

- *Mr. Prakash Shyamlal Rathod either individually or jointly.*

27.5. The Registrar and Transfer Agents are directed to ensure, till further directions, that they neither permit any transfer nor redemption of the securities, including Mutual Fund units, held by:

- *Agrich Traders,*
- *Mr. Prakash Shyamlal Rathod either individually or jointly.*

9. The aforementioned *Interim Order* issued to the *firm* was also in the nature of a Show Cause Notice (hereinafter also referred to as "**SCN**") whereby the *firm* and its Proprietor, PSR were called upon to show cause as to why the investment advisory plans floated by them should not be held as "Investment Advisory Services" in terms of the IA Regulations and thereby the activity of Agrich Traders should not be treated as unregistered investment advisory activity under the SEBI Act and relevant Regulations.

10. In the said *Interim Order*, the *firm* was also directed to show cause as to why appropriate directions, under Sections 11, 11(4), 11B(1) and 11D of the SEBI Act and relevant SEBI Rules/Regulations should not be issued against it, including directions for imposing prohibition on buying, selling or otherwise dealing in the securities market, either directly or indirectly in any manner whatsoever for a particular period as well as not to be associated with any registered intermediary/listed entity in the securities market in any manner whatsoever, and also why any direction to refund the amounts so far collected from the investors/clients by offering such unregistered and unauthorized investment advisory services, should not be issued against it.

11. In this regard, the *firm* was provided with an opportunity to file its objections / reply if any, within 21 days from the date of the *Interim Order* and was also provided with

an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request to be made by it.

12. I note from the records available before me that the *Interim Order* was served on the *firm* through SPAD. In response to the *Interim Order cum* SCN, the Proprietor of the *firm* vide a letter dated December 22, 2020 while denying the allegations levelled against him *inter alia* submitted as follows:

12.1. He had come looking for work in Indore in the year 2014 and had started working in a real estate firm namely, TDS Fincap Pvt. Ltd. Once that firm became non-operational, he was doing odd jobs.

12.2. He came to know of one Mr. Bhupendra Haswani who told him that he can help him in getting a loan of INR 30,000/- from his friend, Mr. Chotu Khatik. Therefore, he gave his PAN card / Aadhar and one blank signed cheque of Bank of Baroda (Ashok Nagar Bhavarkuan branch). Subsequently, Mr. Bhupendra Haswani and his friend, took him to IDFC First Bank and made him sign some documents. Later on, he was informed by Mr. Bhupendra Haswani and his friend that his loan was not sanctioned by IDFC First Bank. Two days, post this event, he was again taken to Bank of Baroda (Annapurna Road branch) where the same process was repeated but no loan was granted to him this time as well.

12.3. During the lockdown, he had left Indore for his home town. Currently, he is working as a painter in Indore.

12.4. His documents have been misused by Mr. Bhupendra Haswani and his friend for fraudulent purpose and he has no role in the extant matter.

13. Subsequently, in compliance with the principles of natural justice, an opportunity of personal hearing was granted to the *firm* on August 4, 2022, during which the Proprietor of the *firm* appeared in person through video conferencing. PSR reiterated his submissions made vide its reply dated December 12, 2020 and *inter alia* submitted as follows:

13.1. He had studied till class 8.

13.2. He wanted a loan of INR 30,000 and Mr. Bhupender Haswani said that he would help him in getting the said loan.

13.3. Post serving of *Interim Order* he had realised that his personal documents were misused and he had filed a complaint with police in this regard. A copy of the complaint has been filed by him.

13.4. The money in his personal bank account was credited by one Mr. Sanjay Jalia who was a contractor. Since, he used to work under him as a painter. Mr. Sanjay Jalia used to credit money in his bank account so that he could pay the other workers who used to work under Mr. Sanjay Jalia.

13.5. Karnataka State Police, Cyber Division had summoned him for questioning regarding credit and debit of money in the bank accounts opened in the name of the firm. Documentary proof of the same will be submitted by him.

13.6. Currently, he is working in his home town, Badanagar, Ujjain.

13.7. *Noticee* was advised to submit an affidavit from Mr. Sanjay Jalia corroborating his submissions made during the personal hearing.

14. Thereafter, on August 4, 2022, PSR submitted a copy of the Notice dated July 23, 2021 received by him under Section 91 of The Code of Criminal Procedure, 1973 from the Karnataka State Police, Cyber, Economic & Narcotics Crime Police Station directing him to appear before the Investigating Authority. Further, he has also submitted an affidavit from Mr. Sanjay Jalia wherein the deponent has stated as follows:

14.1. PSR used to work under him as a painter on contract basis.

14.2. PSR is working for the deponent for the past 4 years. Further, the deponent used to transfer the wages of his other workers to PSR via Phonepe to be distributed by him to the other workers.

15. On a consideration of post hearing submissions, it was observed that there were a few information gaps in the submission of the PSR and certain submissions were not supported by adequate evidence. Therefore, vide a letter dated September 14, 2022, the following queries were raised to PSR, to which he was advised to furnish information:

15.1. It is PSR's contention that the mobile no. 982XXXX188 belongs to Mr. Sanjay Jalia. PSR was advised to submit documentary evidence for the same in the form of phone bill, KYC documents, affidavit by Mr. Sanjay Jalia etc.

15.2. As per PSR's submission he was receiving money from Mr. Sanjay Jalia to make onward payment to other contractual workers working for Mr. Sanjay Jalia. However, his bank statement shows credit entries from the phone No. 9827256188 which as per him belongs to Mr. Sanjay Jalia during the period April 2020 to June 2020. Since during that period there was nationwide lockdown and all civil work had stopped, then what was the reason of transfer of money by Mr. Sanjay Jalia to PSR?

15.3. A copy of the FIR 02/2021 was attached and forwarded to PSR based on which PSR was summoned by Haveri Cyber Police. Since, it is noted from the FIR that it was not filed against Agrich Traders or against any of the persons named by PSR (Mr. Bhupinder Haswani and Mr. Chotu Khatik), PSR was advised to submit a copy of his statement recording made before Haveri Cyber Police and / or follow up action taken by Haveri Cyber Police in the matter pertaining to which he was summoned.

15.4. The information furnished by Mr. Sanjay Jalia vide the affidavit is bereft of factual details. The affidavit furnished by Mr. Sanjay Jalia needs to be supported by PAN / Aadhar of Mr. Sanjay Jalia to show his *bona fide* and to ascertain that he has only furnished the said affidavit. Further, Mr. Sanjay Jalia was advised to submit in his affidavit to state as to during which period, PSR was employed by him and the reason why he instead of withdrawing the money in cash and directly handing it over to PSR for distribution to the other workers, used to online transfer the money to PSR to be withdrawn by him for making payment to other workers. Moreover, PSR is required to state in detail, the reason for withdrawing of the amount from his bank account on various dates with specific purpose for withdrawing on those specific days.

15.5. In which month PSR went home due to lockdown?

16. In response to the aforesaid queries, PSR vide his letter dated September 26, 2022 *inter alia* submitted as follows:

16.1. That he has submitted a print out of "MY ACCOUNT" page of Airtel in support of his submission that mobile no. 982XXXX188 belongs to Mr. Sanjay Jalia.

16.2. That between April 2020 to June 2020, Mr. Sanjay Jalia who is a resident of Indore, had contracted Covid-19. Therefore, Mr. Sanjay Jalia was not able to pay his employees and hence, he had transferred funds to his account to disburse partial salary to the employees who used to stay near his place of residence.

16.3. On August 12, 2021 an Investigating Officer from Haveri Cyber Crime Police Station along with Police Officer of Indore Cyber Cell, had recorded his statement pursuant to an FIR No. 02/2021. Considering that the investigation was ongoing, a copy of his statement recording was not provided to him.

16.4. Between April 2020 to June 2020 he was in Indore. He permanently moved back to his home town, Badanagar in December, 2021.

Consideration of Issues and Submission

17. I have carefully perused the observations recorded in the *Interim Order*, the submissions made by the Proprietor of the *firm* and other materials available on record. I note that it was *prima facie* held in the *Interim Order* that the *firm* was providing investment advisory services through the website, *www.*agrichtraders.com in the name of Agrich Traders. It was found in the preliminary examination that the said website was being used to collect funds from the investor clients and the amounts so collected as fees at different points of time, were being deposited in two different accounts which were opened and held in the name of the *firm*. In view of the aforesaid finding, it was *prima facie* held in the *Interim Order* that the *firm* has violated the relevant provisions of IA Regulations read with provisions of SEBI Act. Those relevant provisions are being reproduced hereunder, for the benefit of ready reference:

SEBI ACT

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

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

INVESTMENT ADVISER REGULATIONS

Application for grant of certificate.

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

18. As stated earlier, SEBI had received a complaint dated May 6, 2020, against the *firm* alleging it to be involved in unauthorized investment advisory activities through its website i.e. *www.agrichtraders.com*. It was observed that the *firm* was making certain irresponsible and outlandish claims about its investment advisory services and was enticing the investors to invest as per the investment advisory services rendered by it, by claiming high accuracy in the calls being given by the *firm* to its clients.

19. I note from the material available on record that the *firm* had two different bank accounts, details of which has been mentioned earlier in the present order. The funds were being deposited in the said two bank accounts. A perusal of the amounts transacted in said bank accounts shows the following:

Table No. 2- Particulars of Bank A/c

Bank Name	Account Opening Date	Date of Last Transaction	Total Credit Received
IDFC Bank	10.10.2019	30.05.2020	INR 99,67,269 (till 14.12.2020)
Bank of Baroda	24.12.2019	30.05.2020	INR 26,61,139 (till 14.12.2020)

20. Further, a perusal of the bank statements of the above noted two bank accounts, reveals that there have been numerous deposits into the said accounts wherein, the narration of the credit entries show that the said deposits were being received into those accounts towards certain amount of fees being charged from the transferors which in the given facts and circumstances of the matter and on the basis of a strong preponderance of probability can be inferred to be payments being received for the services offered by the *firm* through its aforementioned website. An illustrative list of such narrations supporting various credit entries in the account held with Bank of Baroda having a/c number 31XXXXXXXXXX26 is as under:

Table No. 3

Transaction Date	Narration	Credit (in INR)
15-04-2020	IMPS/P2A/010614533146/XXXXXXXXXX6557/FEES	10,000
16-05-2020	UPI/013754594039/18:16:59/UPI/9561972099@ybl/Fee	53,000
16-05-2020	UPI/013718074873/18:57:58/UPI/9561972099@ybl/Fee	40,000
18-05-2020	UPI/013919822101/19:26:33/UPI/9561972099@ybl/Fee	1,00,000

21. I find that the name of the *firm* or its Proprietor, PSR does not appear in the list of registered Investment Advisors available in the database maintained by SEBI. From the aforesaid narration of facts, I find that the *firm* which is a sole proprietorship firm was indeed engaged in rendering advice in an unauthorized manner relating to investing in, purchasing, selling or otherwise dealing in securities and in various other investment products of securities, as was proclaimed by the *firm* through its website viz. *www.agrichtraders.com*.

22. At this juncture, it is pertinent to look at the definition of Investment Adviser as articulated under regulation 2(1)(m) of the IA Regulations which states that 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, I have perused regulation 2(1)(l) of the IA Regulations which

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*."

23. In the light of the aforesaid definitions and the content published on the aforementioned website of the *firm* therein clearly introducing the *firm* as 'r*eputed stock advisory firm in Indore*' read with the allegations imputed in the *Interim Order*, I note that the *firm*, through its website was offering investment advice as defined under regulation 2(1)(l) of the IA Regulations by offering to give advice related to investing in, purchasing and selling of securities and was also offering various investment advisory service plans/packages to investors at large for subscription, which were nothing but purely in the nature of the services of investment advisory.

24. The *Interim Order* has recorded that the aforesaid investment advisory services were being offered by the *firm* in lieu of monetary considerations which were being paid by the concerned investors into the aforementioned two bank accounts, all of which were registered in the name of the *firm*. The details of these payment methods were provided to the public via SMS as shown under the payment option section on the aforementioned website being run by the *firm*.

25. Further, the credit entries in the said two bank accounts are supported by narrations clearly indicating that the money that was being credited, were credits towards 'fees' which were apparently paid by the said clients who availed the advisory services of the *Noticee*, thereby clearly demonstrating the fact that the monies that were received into the said bank accounts were received by way of proceeds from the business operations of the *firm* as Investment Adviser. Considering the fact that the website of the *firm* ostensibly demonstrated that the services offered by the *firm* were in the nature of investment advisory services, coupled with the fact that the particulars of the aforesaid two bank accounts were provided to the clients via SMS as specified in the website guiding the investors to deposit the fees into these accounts, it leads me to an unassailable conclusion that the said pay-in amounts as reflected in the said two

bank accounts were in fact the amounts received towards consideration in lieu of the advisory services offered by the *firm*.

26. Considering the above factual analysis about the activities of the *firm* as proclaimed by it on its own website, the details of payment received by the *firm* from various investors and the bank statements of *firm*, it constrains me to conclude that the activities indulged into by the *firm* squarely fall into the category of investment advisory services as defined under regulation 2(1)(l) of the IA Regulations.

27. In view of the aforesaid discussions and overwhelming factual findings pertaining to the advisory activities being undertaken by the *firm* during the relevant period, I have no doubt that in terms of regulation 2(1)(l) of the IA regulations such kind of advisory services rendered by the *firm* in fact constituted "investment advice" and the *firm* was providing investment advice apparently through its Proprietor viz. PSR, in lieu of consideration which was received and credited into the two bank accounts opened in the name of the *firm*. Therefore, there is no ambiguity left that the *firm* was engaged in the business of providing investment advice to the public, in lieu of monetary consideration and was thus, acting as an 'investment advisers', as defined under regulation 2(1)(m) of the IA Regulations.

28. In this regard, I find it necessary to deal with certain submissions made by PSR which goes to the root of the allegation levelled against him in the *Interim Order cum* SCN. He has submitted that a fraud has been played upon him by one Mr. Bhupendra Haswani and his friend, wherein the latter have misused his personal identification documents and had opened the aforementioned two bank accounts and he has nothing to do with the affairs of the *firm*. The submissions made by PSR is untenable. Either the said submissions are bald statements without any documentary proof or are riddled with inconsistencies. The rationale for my aforesaid observation is given herein below:

    28.1. PSR has submitted that he had met Mr. Bhupendra Haswani who agreed to help him in getting a loan. However, he has not clarified the reason for which he needed a loan and whether he had approached Bank of Baroda for a loan where he had an existing bank account since 2015 onwards or he had approached any other person or agency for the loan amount.

28.2. PSR has also not submitted any independently verifiable evidence which would show that he was in touch with Mr. Bhupendra Haswani or his friend either by way of Call Data Records or SMS or Whatsapp messages, during the period when he was purportedly seeking help of Mr. Bhupendra Haswani for loan or afterwards when Mr. Bhupendra Haswani was not returning his personal identification documents to him. No evidence of his communication with Mr. Bhupendra Haswani has been made available to me.

28.3. PSR has also not given any reason as to what made him trust a person who he had just met so much so that he gave away his personal identification documents to him. Moreover, PSR did not file a complaint against Mr. Bhupendra Haswani for not returning his documents. He only filed a complaint post receipt of *Interim Order,* to show his *bona fide* which cannot be attached any evidentiary value at this stage.

28.4. It is noted from the bank statement of IDFC First Bank that the first credit in the said bank account was for an amount of INR 60,000/- that was deposited on October 17, 2019 and the said amount came from the bank account of PSR which was maintained by him in the Bank of Baroda, Transport Nagar branch. On a scrutiny of the bank statement of the account maintained with Bank of Baroda, Transport Nagar branch , it shows that deposits worth INR 25,000/- on October 11, 2019 and INR 35,000/- on October 14, 2019 were made which were subsequently debited on October 17, 2019. It is also noted that an attempt to credit INR 60,000/- in the bank account maintained with IDFC First Bank was also made on October 14, 2019 but the cheque which was drawn on Bank of Baroda, Transport Nagar branch was returned by IDFC First Bank, as there was signature mismatch. The reversal transaction is reflected in the Bank of Baroda bank statement of PSR. Further, between October 14, 2019 to October 17, 2019 (when the money was actually debited), there is a credit of INR 46,000/- and five ATM cash withdrawals for a total amount of INR 45,023/-. ATM cash withdrawal can only be done by the person who is in possession of the ATM card and it is not PSR's case that he had given his ATM card to anybody else which means he had complete control over the said account. Therefore, post withdrawal of cash from the ATM, PSR would have noticed the balance left in his bank account which was in any case more than it should be and such high balance in his account which was more than expected should have made him inquire about the source of the extra money available in his account. The only plausible reason that he did not make any inquiry regarding the extra money lying in his account was that he was aware of the same. Moreover, it is also noted from the Bank of Baroda bank statement of PSR that SMS alert charges for quarter ending December 2019 were also deducted from the said account which shows that PSR would have received intimation via SMS about the deposit of INR 60,000/- and its subsequent debit (after the cheque was cleared) including the in-between cash withdrawal from the said personal bank account of PSR. The aforesaid factual circumstances indicate that PSR was aware of the transactions happening in both the accounts i.e. Bank of Baroda, Transport Nagar branch and IDFC First Bank, as money was transferred from one account to the other and consequently was aware of and had knowledge of the existence of both the aforesaid bank accounts.

28.5. It has been admitted by PSR that he has signed certain / few documents when he had visited Bank of Baroda, Annapurna Road branch and IDFC First Bank. PSR already had a bank account with Bank of Baroda, Transport Nagar branch which leads to an inference that he was aware that KYC documents or basic details are required to be produced to a Bank to open a bank account. It is also not the case that PSR cannot read or write or is not educated enough to understand the requirement and implication of signing documents in a Bank. He can't feign ignorance to claim that he did not know the difference between loan documents mad account opening documents, when he signed the documents in both the above two Bank branches. So the claim of ignorance by PSR that he was not aware what was written in the document which he was signing, cannot be taken on face value. Be that as it may, PSR has not been able to explain how did it happen that he has himself signed the documents by putting two different types of signatures at the above mentioned two Banks. The records (KYC documents) reflect that at one place (Bank of Baroda, Annapurna Road branch) he has signed by his full name (without his middle name) as his signature, while at IDFC First Bank, he has written only his first name as his signature. Consequently, there was a signature mismatch in the two accounts opened by him which he himself had opened by signing the documents, albeit with assistance and help by Mr. Bhupendra Haswani, as claimed by him. No explanation has been offered by him to justify two different signatures put by him while opening the aforesaid two bank accounts and the motive behind the same.

28.6. From the bank statement of PSR's personal bank account maintained with Bank of Baroda, Transport Nagar branch (Account No. 18590100014680), it is noted that during the calendar year 2018, total credit in the said account amounts to INR 45,735/-, including interest credit by the Bank. Similarly, for the calendar year 2019, there are no credit entries for the months, January, February, April to August 2019, except for interest credit by the Bank. However, from October 2019 onwards as soon as the first bank account was opened with IDFC First Bank with the help of Mr. Bhupendra Haswani (as per his claim) till June 2020 (records post June 2020 are not on record), it is observed that regular credit entries within an interval of few days in the range of INR 2,000/- to INR 46,000/- (average credit entry for 9 months is INR 66,940/- with the cumulative highest credit entry of INR 1,53,000/- in October 2019) and generally in multiples of INR 5,000 is noted. Moreover, the moment the money was being credited in the account, it was being withdrawn the same day or within two days of credit and generally via ATM withdrawal. Thus, a sudden spurt in credit entries followed by its immediate withdrawal in cash, is observed in the bank account of PSR maintained with Bank of Baroda, Transport Nagar branch. To explain this, PSR has submitted that one Mr. Sanjay Jalia who was a contractor for painting job, used to transfer him money to be further disbursed to his other employees. When Mr. Sanjay Jalia was asked to provide a reason as to why Mr. Sanjay Jalia instead of withdrawing money himself and then handing over the cash to PSR to disburse to the workers, used to transfer it online to PSR to be subsequently withdrawn by PSR, Mr. Sanjay Jalia has submitted that between April 2020 to June 2020, he had contracted coronavirus. Therefore, he was not able to pay dues to his employees and hence, he had transferred funds to PSR's account to disburse partial salary to the employees who used to stay near PSR's place of residence. In this regard, it is observed that the aforesaid practice of online transfer of money by Mr. Sanjay Jalia to PSR in fact had started well before April 2020, coinciding with opening of bank account with IDFC First Bank in October 2019. In fact, during the period April 2020 to June 2020, there was a deviation from the practice followed by PSR and after the money was credited to his account by Mr. Sanjay Jalia, the same was mostly being transferred online to some other account(s) instead of withdrawing the said amounts in cash for payments to workers. On 2-3 instances only it was found to have been withdrawn in cash or partially withdrawn in cash and partially transferred online to some other account. Thus, the submission made by Mr. Sanjay Jalia is not exactly supported by the entries made in the bank statement of PSR's bank account maintained with Bank of Baroda, Transport Nagar branch. Therefore, the aforesaid anomalies between the submission of Mr. Sanjay Jalia and the sudden spurt in credit entries in the account of PSR coinciding with opening of the bank account with IDFC First Bank, coupled with the absence of any explanation as to why Mr. Sanjay Jalia was not himself withdrawing money from his account in cash for making payment to the workers through PSR more so when as both of them were residents of Indore at the relevant time, casts a shadow of doubt on the unsubstantiated narratives presented PSR to project his innocence and 'victim of a fraud' explanation made by him to seek exoneration.

28.7. PSR has submitted that the entire process of applying for loan and visiting IDFC First Bank and Bank of Baroda, took fifteen days. However, the bank accounts have been opened on two different dates with a two months' gap. It is pertinent to note that though PSR had personally visited the respective bank branches and signed the papers, still the difference between the opening of the two bank accounts is two months. PSR has not been able to throw any light as to why there was a substantial gap between the opening of the two bank accounts, contrary to his version of signing loan documents at two Bank branches with a fifteen days' gap.

28.8. PSR has submitted that post visiting the bank branches, he left for his village as due to lockdown, his work had stopped. This submission is also not supported by surrounding circumstances of the matter, as the first bank account with IDFC First bank was opened in October 2019 and lockdown was imposed in the last week of March 2020 i.e., after five months. Further, as noted in preceding paragraphs, there were regular credit entries during the pre-Covid period of October 2019 – March 2020. So if PSR was really out of work, then the fact of regular credit entries in his bank account shows otherwise. Moreover, in his post hearing submissions, he has stated that during April 2020 to June 2020 he was in Indore. Thus, it can be seen from PSR's own submission that he has different versions of his duration of stay in Indore during the relevant period.

28.9. Lastly, as noted in the beginning, PSR has submitted that his KYC documents were misused by some third party and that he has no role in managing the affairs of activities related unregistered investment advisory. To support the above contention, he has further made a statement that the issue has also been investigated by Karnataka State Police, Cyber Division. In this respect, he was asked to produce specific document to support his claim of innocence and assertion that he had no role with regard to managing the affairs of the *firm*. Even after granting sufficient time, nothing substantial except for the FIR No. 0002/2021 registered with Police Station, Haveri (relating to an unconnected matter) has been furnished by him. Upon receiving the FIR No. efforts were made to seek the detail of the said FIR and a copy of the FIR was downloaded from the website https://ksp.karnataka.gov.in/view_fir.php. On a perusal of the FIR, it is observed that nowhere it makes a reference to the *firm*, or the persons mentioned by PSR. It pertains to some other persons who have promised assured return to the complainant/ informant, one Dr. Sanjeev Mudri. As per the FIR, Dr. Sanjeev Mudri was promised / assured that if he trades through the firms namely 'Sukh Trades' and 'The Unique Trades' he would be given an assured sum and in the said process cheated him for an amount of INR 68,17,840/- in the name of registration fees. Under the circumstances, I am of the view that PSR has failed to bring even a shred of evidence on record to inspire confidence in his submission that his KYC documents were misused and that action against the person who was actually managing the affairs of the *firm* is under investigation by the Karnataka Police, wherein he is not a party/accused.

29. In view of the aforesaid discussions and on the basis of PSR's unsubstantiated and unverifiable submissions and upon analysis of bank statements of the aforementioned Banks, I find that in the given facts and circumstances of the matter, the submissions made by PSR to justify his actions and / or the events during the relevant period, do not hold water nor do they lend any credibility about his stand that he has been cheated by other persons to whom he gave his KYC documents in good faith.

30. At this stage, I find it relevant to refer to the order of Hon'ble Supreme court in the matter of *Ashok Transport Agency* vs. *Awadhesh Kumar & another*, [(1998) 5 SCC 567] wherein it was held that *"… A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business…*". Therefore, I find that PSR is liable for the acts of the *firm*.

28. As noted above, the facts of the case don't support the submission of PSR and it was imperative for the *firm* to obtain registration as Investment Advisor under the IA Regulations prior to starting its investment advisory services. However, I note that *the firm* continued providing tips/investment advice in an unauthorized manner during the period October 2019 to May 2020 (at least).

29. It is relevant to note here that in order to protect the interest of investors and to preserve the integrity of the securities market, the IA Regulations provide various safeguards to ensure that the interests 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 obtain registration from

SEBI as required under regulation 3(1) of the IA Regulations, 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 also has to conduct its activities in accordance with the provisions of IA Regulations. Further, various crucial safeguards and conditions as provided under IA Regulations include continued minimum professional qualification and net-worth requirement for an investment adviser, disclosure of all conflicts of interest, prohibition on investment adviser entering into transactions on its own account which is contrary to the advice given by investment adviser to its clients for a period of 15 days from the day of such advice given, monetary 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.

30. The activities of PSR, executed through his proprietorship concern viz. the *firm*, as brought out from various materials described above including the aforementioned website, seen in the backdrop of the aforesaid regulatory provisions show that the *firm* was holding itself out as an investment advisory service. However, it is noted that neither PSR nor the *firm* was registered with SEBI as an investment advisor, which is mandatory under IA Regulations. Hence, I find that the activities/representations as made by the *firm* through its website and its conduct *vis-à-vis* its clients without holding a certificate of registration as an investment adviser, is in violation of Section 12(1) of SEBI Act read with regulation 3(1) of the IA Regulations.

31. In order to ensure the protection of investors who receive investment advice, it is imperative that any person carrying out investment advisory activities should be competent enough to deal with investors' monies and SEBI as a regulator, has made it necessary for anyone to conduct investment advisory service to first obtain registration after acquiring the relevant qualification, as prescribed by SEBI, and such person has to conduct his activities in accordance with the provisions of the relevant SEBI Regulations.

32. In my view, unregistered investment advisors like the *firm* in the present case, can put the interest of the common investors at great risk by misleading them or misutilising their funds to the detriment of the interest of such investors as well as others in the securities market. In the present case, the *firm,* on the aforementioned website has, *inter alia,* mentioned that it offers advice in stocks as well as for future and option (F&O) trading, commodities etc. The *firm* through the aforementioned website, has further represented that it is a top firm for the investors and is one of the most trusted and reputed stock advisory firm in Indore. It is also proclaimed in the said website that its recommendations are highly accurate which give consistent profit in any market because it has a team of highly experienced and knowledgeable technical analysts, who provide accurate calls related to Equity and Commodity market trading. However, the conduct of the *firm* in claiming that its recommendations are highly accurate is not a full disclosure and is an active concealment of a crucial material fact that needs to be known to any investor that past performance, is not a guarantee of future result. In other words, historical performance, if any, when presented, is purely for reference purposes and it is inaccurate to simply assume that these will extend into the future. Every investment in the market is subject to market risk and any investment made by the client can also run into losses and even become zero. Similarly, the claim of the *firm* of assuring consistent profit is an active concealment of the material fact that every investment in the market is subject to market risk. Considering the dynamics of the securities market, the returns from the investment in the market are unpredictable, no matter how much and for how long the investment is made. Any information that puts out for the consumption of its existing and prospective clients has to be done with great responsibility and should be of such nature that it enables investors to take reasoned and unbiased decisions regarding their investment. This act of the *firm* of conveying consistent profit is nothing but a ruse to lure customers to its net so as to increase its income. In the light of the same, the acts of the *firm* to make incomplete disclosure and active concealment of material information, are non-genuine and deceptive acts and have been made with an intent to influence the client to avail its advisory services.

33. I find it important to mention here that unregistered investment advisory services are a menace to the securities market and SEBI has been fighting hard to curb this evil since long. In that direction, SEBI has enacted IA Regulations and has been conducting investment awareness seminars throughout the country to alert the public about such unregistered investment advisory activities. Curbing this breed of unregistered investment advisors is a necessity to make the securities market more reliable for retail investors so that they get an opportunity to approach the persons who are qualified and eligible to give such kind of advisory services to them. Permitting the investors to receive an investment advisory service from an unregistered entity in effect, means that the same is received from an unqualified person without following the safeguards prescribed in the IA Regulations. An investor receiving a service from an unregistered investment advisor stands at a disadvantageous position *vis-a-vis* an investor who receives such service from a registered investment adviser with respect to his protection as an investor, as envisaged under the IA regulations. An unregistered investment adviser has not even satisfied the Regulator that he is a fit and proper person to hold the certificate of registration as an investment adviser. Availing of service from such persons is detrimental to investors and such unqualified service would result in irreparable damage, as the investors' money is invested based on advices given by an unqualified and un-regulated advisor. Exposing investors to such unauthorized and unregulated services also has the effect of interfering with the development of the securities market, as victims of such services as well as their close ones tend to lose faith in the securities market. The objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also the orderly development of the securities market. Therefore, the investment advisory services should only be allowed to be conducted by persons who are deemed fit under the IA Regulations after following the safeguards mentioned therein.

34. I note that the materials available on record do not indicate the exact amount of fees collected by the *firm*, as a result of providing such unauthorised investment advice to investors, in violation of the provisions of the IA Regulations. However, I find from the *Interim Order* that the *firm* has received credits worth a total sum of INR 1.26 crore (INR 1,26,28,408/-) in its two bank accounts enumerated above, either directly

through account transfer of funds or through various other payment mediums such as PhonePe.

35. After holding that the *firm* was running an unauthorized investment advisory services through which it had lured numerous gullible retail investors to subscribe to its service packages, who are the most vulnerable sections of the participants of the securities market, as the Regulator, it is an avowed duty of SEBI to protect the interest of such investors. As the *firm* has failed to provide specific details of the funds collected by it for its unauthorized investment advisory services which were credited into its two bank accounts, I take the entire amount of funds received by it through the said two bank accounts, which amounts to INR 1,26,28,408/-, treating the same as the funds collected by it from its unauthorized investment advisory services only. The only method I find feasible to redeem the investors is to direct the *firm* and / or its Proprietor, PSR to repay such funds collected from the investors.

ORDER

36. In view of the foregoing discussions and observations/findings about the activities engaged in by the *firm* in rendering investment advisory in an unauthorized and illegal manner, as has been established in facts and circumstances of the case, and in order to achieve the avowed object of SEBI Act, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4),11B (1) and 11D, read with of Section 19 of the SEBI Act, while disposing of the allegations levelled in the *Interim Order* cum SCN hereby direct the following:

36.1 The *firm* / PSR shall within a period of three months from the date of this Order, refund the money received from the clients/investors/complainant, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities.

36.2 The *firm* / PSR shall within 15 days of coming into force of this Order issue a public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of its contact person such as names, addresses and contact details. A period of two months from the date of the publication of the public notice shall be provided to the investors/clients for submitting their claims.

36.3 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.

36.4 After completing the aforesaid repayments, the *firm* / PSR shall file a report of such completion with SEBI addressed to the Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 15 days, after completion of three months from the coming into force of this Order, duly certified by an independent Chartered Accountant. 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.

36.5 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.

36.6 The *firm* / PSR is prevented from selling its assets, properties and holding of mutual funds/shares/securities held by it / him 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 *firm* / PSR and for depositing balance amount with SEBI, as directed in this Order, from the bank account of the *firm;* wherein debit has been frozen by virtue of *Interim Order* dated December 15, 2020.

36.7 The *firm* / PSR shall resolve all the complaints pending against it and file a report of such resolution with SEBI addressed to the Division Chief, Investment

Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 30 days from the date of this Order.

36.8 The *firm* / PSR 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 6 (six) months from the date of this Order or till the expiry of 6 (six) months from the date of completion of refunds to investors / clients along with depositing of balance amount, if any, with SEBI, as directed in paragraphs 36.1 and 36.5 above, whichever is later;

36.9 The *firm* / PSR is also restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in any capacity for a period of 6 (six) months from the date of this Order or till the expiry of 6 (six) months from the date of completion of refunds to investors / clients along with depositing of balance amount, if any, with SEBI, as directed in paragraphs 36.1 and 36.5 above, whichever is later;

36.10 The *firm* / PSR shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraphs 36.8 and 36.9 above, either directly or indirectly, investment advisory services or any other activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws;

36.11 The *firm* / PSR shall not divert any funds collected from investors, kept in bank account(s) and/or in their custody except for the purpose of refund as directed in paragraph 36.1 above;

36.12 The *firm* / PSR shall not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in its / his name, including money lying in bank accounts except for the purpose of refund and for depositing balance amount with SEBI, as directed in paragraphs 36.1 and 36.5 above and until the refund and the deposit of balance amount, if any is completed and a report as mandated under paragraph 36.4 is filed with SEBI.

37. The direction for refund, as given in paragraph 36.1 above, does not preclude the clients/investors of Agrich Traders from pursuing the other legal remedies available under any other law, against Agrich Traders / Mr. Prakash Shyamlal Rathod for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

38. This Order shall come into force with immediate effect.

39. Obligation of the *firm* / PSR, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of any of the *firm* / PSR in the F & O segment of the Stock Exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

40. A copy of this Order shall be served upon the *firm* / PSR, all the recognized Stock Exchanges, Depositories, Registrar and Transfer Agents and Banks for necessary compliance with the above directions.

-Sd-

DATE: January 23, 2023 **S. K. MOHANTY**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA