

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55556	Date: February 08, 2023
Circular Ref. No: 35/2023	

To All NSE Members

Sub: SAT Order in the matter of Bull Research Investment Advisors Private Limited

This is with reference to NSE Circular No. NSE/INVG/47144 dated January 28, 2021 in respect of SEBI Order No. WTM/MPB/IMD/WRO/170/2021 dated January 25, 2021 and NSE Circular No. NSE/INVG/48162 dated May 03, 2021 in respect of SEBI Order No. WTM/MPB/IMD/WRO/190/2021 dated April 30, 2021.

Hon'ble SAT now vide its Order dated February 06, 2023 inter alia stated that direction provided in paragraph 31(a), (b) and (e) of the interim directions dated January 25, 2021 against the below mentioned entities cannot be sustained and are set aside.

Sr. No.	Name of Entity	PAN
1	Bull Research Investment Advisors Private Limited (BRIA)	AAHCB1200H
2	Ashif Shaikh	BGDPS3081F
3	Vinit Satpute	EBMPS2703F
4	Sandeep Kushwaha	DPBPK9313F

The detailed order is available on SAT website (<http://www.sat.gov.in>).

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page at the below mentioned link:

<https://www.nseindia.com/regulations/member-sebi-debarred-entities>

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:

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For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

Annexure: - SAT Order in the matter of Bull Research Investment Advisors Private Limited

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 25.01.2023
Date of Decision : 06.02.2023

Misc. Application No. 1421 of 2021
And
Misc. Application No. 271 of 2022
And
Appeal No. 62 of 2022

1. Bull Research Investment Advisors Pvt. Ltd.
209, Karamchari Colony, Dewas,
Madhya Pardesh- 455 001
 2. Ashif Shaikh
209, Karamchari Colony, Dewas,
Madhya Pardesh- 455 001
 3. Vinit Satpute
06- Vivekananda Colony,
Moti Bungalow, Dewas,
Madhya Pardesh- 455 001
 4. Sandeep Khushwaha
172, Dhawakar Naka, Mauranipur,
Jhansi Uttara Pradesh- 284 204
- ...Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051

...Respondent

Mr. Vedchetan Patil, Advocate for the Appellants.

Mr. Vishal Kanade, Advocate with Mr. Akash Jain and
Ms. Daksha Kasekar, Advocates i/b Mansukhlal Hirlal & Co.
for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The appellants have challenged the ex-parte ad-interim order dated January 25, 2021 as well as a confirmatory order dated April 30, 2021 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) whereby a slew of directions were issued, namely:

“31.1 Bull Research Investment Advisors Private Limited and its directors viz., Ashif Shaikh, Vinit Satpute and Sandeep Kushwah are directed to:

- a. not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly;*
- b. 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;*
- c. not to divert any funds collected from investors, kept in bank account(s) and/or in their custody;*

- d. 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 its name, including money lying in bank accounts except with the prior permission of SEBI.*
- e. immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc. in relation to their investment advisory activity in the securities market.*
- f. provide a full inventory of all assets held in its 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.*
- g. remove all contents from its website immediately and display only the content in its website that SEBI has passed interim order dated January 25, 2021 reproducing the directions mentioned in paragraph 31 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.*

31.2 If BRIA or its directors have any open position in any exchange traded derivative

contracts, they are permitted to close out/ square off such open positions within three months from the date of receipt/knowledge of this order or at the expiry of such contracts, whichever is earlier. They 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.

31.3 The Depositories are directed to ensure, that they neither permit any debits nor any credits in the demat accounts held by:

- a. Bull Research Investment Advisors Private Limited*
- b. Ashif Shaikh either individually or jointly*
- c. Vinit Satpute either individually or jointly*
- d. Sandeep Kushwah either individually or jointly*

31.4 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 Funds units, held by:

- a. Bull Research Investment Advisors Private Limited*
- b. Ashif Shaikh either individually or jointly*
- c. Vinit Satpute either individually or jointly*
- d. Sandeep Kushwah either individually or jointly”*

2. Pursuant to the interim order the appellants filed their objections and contended that they are not providing any assured returns. The WTM after considering the material evidence on record confirmed the ad-interim order contending that in view of the fact that enquiry is still going on and pending direction under 11 and 11B of the SEBI Act, balance of convenience was not in favour of the appellants to revoke the directions issued as *prima facie* the appellants were in contravention of the various provisions of the SEBI Act and the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (“IA Regulations, 2013” for convenience).

3. The facts leading to the filing of the present appeal is, that the appellant Bull Research Investment Advisors Private Limited (hereinafter referred to as “BRIA/ Company”) is an Investment Adviser and registered under the IA Regulations, 2013 since April 02, 2018. It transpires that one complaint was received from an investor based on which SEBI conducted an investigation into the affairs of the Company in which it was alleged that the Company was offering assured returns.

4. Based on the investigation SEBI observed as under:-

- a. BRIA had offered assured returns/ target returns to its clients and violated provisions of IA Regulations;
- b. BRIA had not carried out risk profiling and suitability assessment of clients as per the provisions of IA Regulations;
- c. BRIA had violated the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“PFUTP Regulations”).

5. Based on the aforesaid observations the ex-parte ad-interim order was passed on the ground:-

- a. BRIA has provided assurance of target/ approachable profit to the clients and is providing commitment to continue its service of providing recommendations till target returns or implied assurance of profit is achieved.
- b. BRIA had sold its advisory products and has taken payment even before carrying out KYC, Risk Profiling of clients and suitability assessment of services.
- c. BRIA has not done the Risk Profiling of the clients appropriately.
- d. BRIA has relied upon the waiver of suitability of products/ services rather than truly assessing the clients age, income, financial condition, eligibility to trade, investment objectives and suitability of various products.

6. After considering the replies and the objections the interim order was confirmed.

7. We have heard Shri Vedchetan Patil, the learned counsel for the Appellants and Shri Vishal Kanade, the learned counsel for the respondent.

8. The finding in the impugned orders is, that the appellants were providing assured returns. This finding is based on a payment receipt in which the appellant has used the word “target” and, on this basis, the WTM has come to the conclusion that the word “target” indicates that it is an assured return. Further, a finding has been given that the payment receipt also indicates the fact that the service is promised to continue till the target is achieved and, on this basis, a presumption has been arrived that the appellant is giving an assurance that the target would be achieved and, therefore, providing assured returns. Apart from this document there is no other document to show that the appellant is providing an assured return. There is no evidence to show that a fixed amount was being given to the investors either on a monthly basis or quarterly basis or yearly basis.

9. Further, the word “target” does not mean assured return. As per Webster Dictionary “target” means an object, usually marked with concentric circles, to be aimed at in shooting practice or contests. What it means in the given context is a marker. The payment receipt shows “target (not assured/ not guaranteed)” meaning thereby that no assurance or guarantee is given for reaching the projected target. In another receipt, we find that it specifically states that the Company does not provide any kind of guarantee or assured returns.

10. In the light of the aforesaid, we find that WTM has cherry picked a word “target” to come to a *prima facie* finding that this amounts to an assured returns without considering the words “not assured / not guaranteed” and without considering the contention that the Company does not provide any guarantee or assured returns. Such non-consideration of the entire sentence and cherry picking a single word from the sentence in our opinion is unwarranted.

11. We also find that the WTM has further held that the Company further provides that service would be promised to continue till target is achieved. This finding is based on surmises and conjectures. There is no document before us to

show that such promise to provide service would continue till target is achieved. In the absence of any document to this effect this finding is based purely on surmises and conjectures.

12. Consequently, we are of the opinion that there is no basis at the moment to come to a conclusion that the appellant-company is offering assured returns on investment advice.

13. On the issue that the Company has collected payment before doing Know Your Client (“KYC”) and risk profiling of clients we are of the opinion that at best if this charge is found to be proved can only invite a penalty for violation of Regulation 16 and 17 of the IA Regulations but under no circumstances could it invite a direction to the appellants to cease and desist from carrying out any investment advisory services.

14. The interim order was passed on January 25, 2021 which was confirmed on April 30, 2021. Two years have elapsed and the appellants have been restrained from accessing the securities market and from acting as an investment advisor. The appellant has a right to carry on his business under the Constitution of India. Till date the investigations are going on and, upon a

specific quarry being asked, the counsel for the respondent contended that it will take another couple of months to issue a show cause notice, if any.

15. In our opinion the right to carry on business is guaranteed under Article 19 of the Constitution of India. The direction to cease and desist from carrying on business cannot be issued on such flimsy grounds especially when *prima facie* evidence is lacking. Even before us, no evidence has been filed to show that the appellants were giving assured returns by way of fixed returns to the investors. Apart from the payment receipt which showed the word “target” there is no other evidence which can lead to a conclusion that the appellants were carrying on assured returns. The word “target” may lead to a suspicion of providing assured returns but such suspicion cannot be a *prima facie* ground or a *prima facie* evidence to issue a direction to cease and desist from carrying on investment advisory services. Such orders can only be passed after final adjudication.

16. In the light of the aforesaid, direction provided in paragraph 31(a),(b) and (e) of the interim directions dated January 25, 2021 cannot be sustained and are set aside. All the other directions will continue to remain in operation till the next

four (4) months and in the event a show cause notice is not issued the remaining directions would automatically stand vacated. The appeal is partly allowed. In the circumstances of the case, parties shall bear their own costs. Misc. Applications are disposed of accordingly.

17. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

06.02.2023
PK