National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55817	Date: February 28, 2023
Circular Ref. No: 61/2023	

To All NSE Members,

Sub: Final Order in respect of Sarvesh Kumar (Proprietor of M/s Business Mart World)

SEBI vide its order no. WTM/SM/SRO/SRO/24255/2022-23 dated February 28, 2023, has hereby debarred the entity Mr. Sarvesh Kumar, Sole Proprietor of M/s Business Mart World (PAN: BRHPK7160G) from accessing the securities market, directly or indirectly and prohibited it from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 06 (six) months from the date of this Order or till the expiry of 06 (six) months from the date of completion of refunds to investors as directed in paragraph 40.1 of SEBI Order, whichever is later.

Further, all open positions, if any, of the above entity in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by SEBI Order.

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 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:
Mr. Ritik Bhriegu (Extension: 23020), 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

ANNEXURE: Final Order in respect of Sarvesh Kumar (Proprietor of M/s Business Mart World)

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTION 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.	**Mr. Sarvesh Kumar, Sole Proprietor of M/s Business Mart World**	**BRHPK7160G**

Background

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a complaint dated January 08, 2019 wherein it was alleged that investment advisory services were being run in the name of a sole proprietorship firm namely M/s Business Mart World, from the website of *www.businessmartworld.com* without getting registration from SEBI. On the basis of such complaint, SEBI carried out an examination to ascertain as to whether unregistered investment advisory activities are being carried out through the aforementioned website or under the name of the sole proprietorship firm.

2. It is noted in the course of the said examination that the website *www.businessmartworld.com* was inactive at the time when the examination was underway. The cached web pages of the aforementioned website contained information which on its face, disclosed that it was offering investment advisory

services in stocks-cash and F&O, commodities, including bullions, metals and agro-commodities etc.

3. It was observed from the examination of information available pertaining to the aforementioned website that an account with State Bank of India (hereinafter referred to as '**SBI**') bearing account number 343XXXXXX08 was opened at Bannerghatta Road Branch of SBI in the name of 'Business Mart World', a sole proprietorship concern with Mr. Sarvesh Kumar (hereinafter referred to as '***Noticee***') listed as its proprietor. At the same time, funds were being accepted through a PayUmoney account which were being deposited in Axis Bank Account No. 917XXXXXXXXXX97 opened in the name of M/s Business Mart World (hereinafter referred to as '***Firm***').

4. An examination of KYC documents submitted to SBI, Axis Bank and PayUMoney while opening the respective accounts with them show that Mr. Sarvesh Kumar s/o Mr. Ashok Choudhary is the sole proprietor of M/s Business Mart World which was incorporated on August 29, 2014. The email ID of Business Mart World as available with the above stated banks was mentioned as sarvesc1987@gmail.com and the proprietary concern was addressed at 310A, 4th Floor, GR Queens Amber, 1st and 2nd Cross, Omkar Nagar, BG Road, Bangalore.

5. It was observed during examination that the *Noticee* was not registered with SEBI to act as an Investment Adviser or in any other capacity in the securities markets.

6. A further scrutiny of the aforesaid website showed that the website was not active at the time of preliminary examination. It was observed that the *Noticee,* at the time of inviting the investors to invest in securities market as per various investment advisory services rendered by him to the clients through the *Firm*,

was also making tall claims before the public through his website *inter alia* as 'more than 90% accuracy in his recommendations' etc.

7. It is noted from the material available on record that the above mentioned website contained disclosure that it provided various kinds of services pertaining to the securities market and further in respect of the kind of investment services, it was engaged in providing, there were corresponding prices/fee chargeable for various investments products being offered by the *Noticee* as mentioned on the website of the *Firm*, which were as following:

Table 1: Subscription plans:

S.No.	Package	One Month Fee (in Rs.)	Three Months Fee (in Rs.)	Six months Fee (in Rs.)	One Year Fee (In Rs.)
Equity Premium					
1	Stock Cash	Price on Request	12500	18500	29900
2	Stock Future		11900	20500	35000
3	Stock Option		11900	20500	35000
4	Delivery		17000	26500	40100
5	Nifty Futures		11900	20500	34400
6	Nifty Options		11900	20500	35100
7	Stock Combo		30500	49000	86500
8	Nifty Combo		17000	26000	42000
9	Stock + Nifty Combo		40100	65000	99500
Equity Platinum					
10	Stock Cash	18500	30000	45800	75500
11	Stock Future	20000	32500	49500	77000
12	Stock Option	20000	32500	49000	77000
13	Delivery	21000	33000	49500	75600

14	Nifty Futures	16000	27000	41000	65500
15	Nifty Options	16000	27000	41000	65500
16	Stock Combo	30000	50000	80000	127000
17	Nifty Combo	25000	44000	69400	111000
Commodity Premium					
18	Bullions	Price on Request	20500	32500	49500
19	Base Metals		18900	29500	47800
20	Energy		17500	27500	45300
21	MCX Combo		35500	55700	89400
Commodity Platinum					
22	Bullions	20500	34400	55500	88000
23	Base Metals	18000	31000	51000	79500
24	Energy	18000	31000	51000	79500
25	MCX Combo	50000	71000	115000	189000
Agri Premium					
26	Agri	Price on Request	23500	37500	60000
Agri Platinum					
27	Agri	23500	38500	59400	94500

8. An examination of cached pages of the website of the *Firm* showed that funds were being collected by the *Noticee* through payment gateway PayUMoney and throughout the period of operation of the *Firm*, a total of 975 credit transactions were made in the said account with PayUMoney which amounted to a total of INR 1,57,27,418/-. Similarly, the SBI Account No. 343XXXXXX08 of the *Firm* had seven credit transactions which carried the terms related to investment advisory services in the narration of such bank entries viz. tips, stock tips, and advisory mentioned in their descriptions. The funds collected through the

aforementioned seven transactions was INR 57,500/-. Thus, it was observed during the course of examination that the *Noticee* had collected a sum of INR 1,57,84,918 through 982 transactions during the course of investment related activities conducted for the period commencing from November 20, 2014 to March 27, 2019.

9. In the course of examination, SEBI sent a letter dated September 21, 2021 and a reminder email dated September 29, 2021 to the *Noticee* advising him to submit the details of the activities being carried out by him through the said *Firm*. In his reply vide email dated October 08, 2021, the *Noticee* allegedly admitted to have engaged in activities of investment advisor.

10. On the basis of the aforesaid findings from the examination, the evidence gathered during examination and considering the sensitive nature of the alleged illegal advisory activities being undertaken by the *Noticee*, a Show Cause Notice (hereinafter referred to as "**SCN**") dated March 16, 2022 was issued to the *Noticee* whereby it was alleged that by carrying out investment advisory services without being registered with SEBI, the *Noticee* has violated the provisions of Regulation 3(1) of Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 (hereinafter referred to as '**IA Regulations**') read with Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'). In view of this, the *Noticee* was called upon to show cause as to why suitable directions, including refund of fees collected, debarment, non-association with listed entities, intermediaries etc. should not be issued against him under the provisions of Sections 11B(1) and 11(4) of SEBI Act.

11. In this regard, the *Noticee* was provided with an opportunity to submit his reply, if any, within 21 days from the date of delivery of the SCN 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 the him, in that regard.

12. I note from the records available before me that a digitally signed copy of SCN was delivered at the email address of the *Noticee* through an email dated March 16, 2022. However, no reply was submitted by the *Noticee* to the aforementioned SCN. Subsequently, vide email dated May 04, 2022, the *Noticee* was advised to submit his reply to the aforementioned SCN. However, no reply was submitted by the *Noticee*.

13. Thereafter, in compliances with the principles of natural justice, an opportunity of personal hearing was granted to the *Noticee* on November 01, 2022. On the said date, the *Noticee* appeared in person through video conferencing and submitted that he had applied for registration as Investment Advisor before SEBI. However, upon query, he admitted that he didn't have registration when he was providing investment advisory services to his clients. He has contended that the amount calculated by SEBI in the SCN was not correct as he had repaid some amount back to his clients. Looking at the aforementioned contentions of the *Noticee*, he was given 15 days' time to submit his reply to the SCN along with documentary evidences in support of his claims made during the course of personal hearing. Certain additional queries were also raised during the course of personal hearing, which the *Noticee* was directed to reply along with supporting documents within a period of 15 days. Thereafter, *vide* email dated November 16, 2022, the *Noticee* has sought for additional time to submit his response. Subsequently, vide letters dated November 25, 2022 and February 01, 2023, the *Noticee* submitted his reply to the SCN. In his written submissions, the *Noticee* has contended the following:

13.1. That in April 2019, Cyber Crime Police Station, Cyberabad, Telangana had raided his office and seized various documents, papers, laptops and mobile phones. Therefore, he is not in a position to give a detailed reply.

13.2. That he was a partner with Mr. Naveen Rai and Ms. Ekta Kejriwal in the *Firm* as well as in M/s Gold Tree.

13.3. That certain NISM qualified persons were employed at the *Firm* as analysts.

13.4. That he had taken service from a few companies from time to time for the work of analysts.

13.5. That he had repaid a total of INR 19.20 lakh to 4 clients.

13.6. That he has complied with directions issued vide Order dated August 24, 2022 in the matter of M/s Gold Tree.

The *Noticee* has also submitted his Income Tax Returns ('**ITR**') for FY 2018-19 and 2019-20. He has submitted that he doesn't have ITR prior to 2018. However, other than his ITR, the only documents he has submitted are copies of newspapers wherein he has published advertisements declaring that M/s Gold Tree and M/s Business Mart World have been permanently closed. Other than that, no document has been submitted by the *Noticee* to corroborate his abovementioned contentions.

<u>Consideration of Issues and Submission</u>

14. I have carefully perused the allegations made against the *Noticee* and his sole proprietary concern M/s Business Mart World, as recorded in the SCN, from the submissions made by the *Noticee* and from other materials available on record. I note that it is alleged in the SCN that the *Noticee* was engaged in providing Investment Advisory Services through his sole proprietorship firm M/s Business Mart World and for that purpose, he was using the website namely

www.businessmartworld.com. It was found in the preliminary examination that the aforementioned website was being used to collect funds from the investors/ clients and the funds so collected as fees, were being deposited either in SBI account number 343XXXXXX08 or in Axis Bank Account No. 917XXXXXXXXXX97 (through a PayU money account), opened in the name of M/s Business Mart World. In view of the aforesaid finding, it has been alleged in the SCN that the *Noticee* has violated the relevant provisions of IA Regulations, 2013 read with provisions of SEBI Act. Those relevant provisions are being reproduced hereunder, for the benefit of ready reference:

SEBI ACT, 1992

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:

SEBI (INVESTMENT ADVISER) REGULATIONS, 2013

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:

15. As stated earlier, SEBI had received a complaint dated January 08, 2019 against www.businessmartworld.com alleging it to be involved in unauthorized Investment Advisory activities. From scrutiny of the said website, it was noticed that the *Noticee* was operating through this website. However, this website was found to be inactive at the time of examination conducted by SEBI. Therefore, the cached

pages of this website were retrieved by SEBI and the same were examined. It was observed from such examination that the *Noticee* was making certain irresponsible and outlandish claims about his investment advisory services and was enticing the investors to invest as per the investment advisory services being rendered by him. Sufficient to say that the *Noticee* was luring gullible investors by making proclamations such as such as '*more than 90% accuracy in our recommendations*' etc., on his aforementioned website.

16. I note from the materials available on record that certain queries were raised to the *Noticee* vide letter dated September 21, 2021 which was served upon the *Noticee* vide email of even date. The replies to the said queries were submitted by the *Noticee* vide an email dated October 08, 2021. In the said reply, the *Noticee* has contended that while he was providing financial services but he has never '***knowingly*** *acted as a Investment Advisor*'. However, at the stage of personal hearing, he has admitted to have rendered Investment Advisory Services without obtaining registration as such from SEBI.

17. I note from the material available on record that the *Noticee* had opened two different bank accounts in the name of the *Firm*. While the funds were being deposited in SBI Account No. 343XXXXXX08, the *Noticee* had also opened an account with payment gateway PayU Money and the money collected through it were being deposited in Axis Bank Account No. 917XXXXXXXXXX97 opened in the name of the *Firm*. I note from the materials available on record that the said PayU Money account was also opened in the name of the *Firm* and the agreement for the same was signed by the *Noticee* as its sole proprietor. A perusal of the said bank accounts show that the *Noticee* had started receiving money in lieu of Investment advisory services in the aforesaid SBI Account from November 20, 2014 onwards and the last deposit in the said account for the said service had been made on June 11, 2018. At the same time, funds started to be

deposited in PayU Money Account from July 20, 2017 and the last deposit in the said account had taken place on March 27, 2019.

18. Further, a perusal of bank statements of the two aforementioned bank accounts reveals that there have been numerous deposits into the said accounts wherein the term 'stocks', 'tips', 'advisory' etc. figures in the description of various amounts deposited as seen from the bank statements. An illustrative list of the said narrations in the account held with SBI having account number 343XXXXXX08 is as under:

Transaction Date	Narration	Credit (in INR)
20-11-2014	BY TRANSFER-INB to Business Mart For Tips	10000
13-12-2017	BY TRANSFER-INB IMPS734716754110/ (mobile number)/X656/ ADVISORY C--	5000
28-05-2018	BY TRANSFER-INB Stock Tips Fees--	10000
31-05-2018	BY TRANSFER-INB Stock Tips--	16500

19. In the absence of any submissions contrary to the allegation made in the SCN and further, considering the response submitted, it is evident from the aforementioned descriptions of credit entries found from bank statement of the aforementioned SBI Account being number 343XXXXXX08, that the funds being received in the said bank accounts were received as fees against Investment Advisory services only. Further, during the course of personal hearing, the *Noticee* has again admitted to have accepted fees in the said two bank accounts in lieu of providing the said advisory services to his clients/subscribers.

20. The only contention raised by the *Noticee* during the course of present proceedings is that he had repaid funds to the tune of INR 19.20 lakhs to some of his clients. The *Noticee* was specifically asked to provide further corroborative details in support of the above claim of having paid back the fees to certain

clients/investors. However, no evidence of such fund payment was submitted by the *Noticee* despite clearly directed to do so during personal hearing.

21. I find that the name of neither the *Noticee* nor the *Firm* appear in the list of registered Investment Advisors available with SEBI. The same has not been disputed even by the *Noticee* either in his written submission or during the course of personal hearing attended by them. He has only contended that he had applied for registration as Investment Advisor. However, firstly, no evidence supporting this claim has been provided by him. Secondly, application for registration as Investment Advisor is not equivalent to getting registration and no provision permits any person to engage in providing such services without having proper registration or to say the least, by merely filing an application seeking registration. As stated above, though the *Noticee* has submitted to have filed an application to seek registration as an Investment Advisor, however, no such document to lay even credence to the above submission has been filed in the instant proceeding. Nonetheless, having gone through the relevant provision governing the registration of an entity as Investment Advisor, it is observed that to initiate the activity of Investment Advisor, a person is required to be registered first with SEBI and needs to obtain a registration certificate, before he can initiate investment advisory services. The only liberty or relaxation granted under the IA Regulations, 2013 by virtue of a proviso to Regulation 3(1) is related to an entity already engaged in such activity before the notification of the said regulation come into place, to continue with the existing activity provided an application is filed with SEBI and said activity may be continued till the disposal of the application filed with SEBI seeking registration. However, in the instant matter, I have already observed above that no such claim has been advanced with supporting document by the *Noticee* so as to fall under the aforesaid proviso to

Regulation 3(1) of the IA Regulations, 2013, hence, no merit is found in the submission that an application has been filed with SEBI.

22. From the aforesaid narration of facts, the replies filed by the *Noticee* in response to the SEBI letter dated September 21, 2021 as well as from the allegations made in the SCN and submissions so advanced in the course of personal hearing, I find that the *Noticee*, acting through his sole proprietary concern, was admittedly and undisputedly engaged in giving advice in an unauthorized manner relating to investing in, purchasing, selling or otherwise dealing in securities and various other investment products of securities, as was proclaimed by the *Noticee* through his website viz. https://www.businessmartworld.com/.

23. At this juncture, it is pertinent to look at the definition of Investment Adviser (or short "**IA**") as articulated in regulation 2(1)(m) of the IA Regulations, 2013 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, 2013 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.*"

24. In the light of the aforesaid definitions and the content published on the aforementioned website of the *Noticee* clearly describing the *Firm* as 'an Investment Advisory Company' read with the allegations imputed in the SCN, I note that the *Noticee*, through his website *www.businessmartworld.com* was offering investment advice as defined under regulation 2(1)(*l*) of the IA Regulations, 2013 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 to securities, which were nothing but purely in the nature of the services of investment advisory.

25. The *SCN* has alleged that the aforesaid investment advisory services were being offered by the *Noticee* in lieu of monetary considerations which were being paid by the concerned investors either directly into the SBI Bank Account number 343XXXXXX08 or into the PayUMoney account, which in-turn was linked with the Axis Bank Account No. 917XXXXXXXXXX97, both of which are registered in the name of the *Firm* M/s Business Mart World. The details of these payment methods were also provided under the payment option section on the aforementioned website being run by the *Noticee*.

26. Further, the credit entries in the PayUmoney account of M/s Business Mart World are supported by narrations such as mobile numbers and names of the clients with the deposit amounts matching with different payment plans mentioned in the Table 1 above, thereby clearly demonstrating the fact that the monies that were received into the said PayUmoney Account, which was in-turn linked with the Axis Bank Account No. 917XXXXXXXXXX97, were in fact received by way of proceeds from the business operations of the *Noticee* as Investment Adviser. Considering the fact that the websites of the *Noticee* ostensibly demonstrated that the services offered by the *Noticee* were in the nature of investment advisory services coupled with the fact that the aforesaid PayUmoney Account and Bank Account were specified in the website, intimating the prospective 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 Accounts with SBI and Axis Bank were in fact the amounts received towards consideration in lieu of the advisory services offered by the *Noticee*.

27. Considering the above factual analysis about the activities of the *Noticee* as proclaimed by him on his own website, the details of payment received by the *Noticee* from various investors, the bank statement of the *Firm* (supported by the KYC records of the *Firm* along with that of the *Noticee*), and most importantly, the fact that the *Noticee* has admitted to the charges/allegations levelled against him in the SCN in his email dated October 08, 2021 as well as during the course of hearing held on November 01, 2021 followed by his failure to submit any documentary evidence to refute the said allegations, it constrains me to conclude that the activities indulged into by the *Noticee* squarely fall under the category of investment advisory services as defined under regulation 2(1)(*l*) of the IA Regulations, 2013.

28. The *Noticee*, *vide* his submissions dated November 25, 2022 as well as during the course of the hearing held on November 01, 2022, has submitted that the total amount of INR 1,57,84,918/- credited in the SBI Account No. 343XXXXXX08 and Axis Bank Account No. 917XXXXXXXXXX97 during the period between November 2014 and March 2019 did not entirely relate to fees received from investment advisory services. However, the *Noticee* has failed to submit any evidence to suggest that any amount of credit used in the aforementioned calculation has not been received on account of his Investment Advisory activities. In fact, to be fair to him, only those seven transactions from his SBI Account No. 343XXXXXX08 have been taken in the aforementioned calculation, which had words such as tips, advisory, investment etc. in their description. Further, the *Noticee* has submitted his ITR for only two financial years. Even in those ITRs, I see no evidence of any separate income earned by him from separate revenue streams so as to exclude any such bank entry from the calculation of funds, that have been considered to have been received by virtue of investment advisory activities. Thus, in the absence of any documentary evidence to support his submissions, it can be conclusively inferred that all the funds

that have been credited to the Axis Bank Account No. 917XXXXXXXXXX97 as well as the seven entries of receipts found in the SBI Account No. 343XXXXXX08 of M/s Business Mart World during the above stated period, the details of which have been provided as annexure to the SCN, were actually received by the *Noticee* in lieu of providing investment related services as indicated on the website of the *Firm*.

29. Further, the *Noticee* has contended that he has repaid an amount of INR 19.20 lakhs to four of his clients. In support of such a contention, the *Noticee* has submitted a list of certain persons whom he claims to have repaid the money. However, the *Noticee* has not been able to furnish any corresponding confirmations of receipts and repayments of such money from any of the concerned clients to whom such funds were supposedly repaid. At the same time, the *Noticee* has also failed to provide any evidence of any such payment viz. bank account entries, cheque etc., which makes it impossible to ascertain the veracity of such a claim although he was specifically advised to submit the same during the course of personal hearing.

30. In view of the aforesaid discussions and overwhelming factual findings pertaining to the advisory activities being undertaken by the *Noticee* during the relevant period, I have no doubt that in terms of Regulation 2(1)(*l*) of the IA regulations, 2013 such kind of advisory services rendered by the *Noticee*, constituted "investment advice" and the *Noticee* was providing investment advice through his sole proprietorship firm M/s Business Mart World, in lieu of monetary considerations which were being received by him that were credited into the accounts of the *Firm* maintained with SBI and Axis Bank. Therefore, there is no ambiguity left that the *Noticee* and his sole proprietary firm M/s Business Mart World were engaged in the business of providing investment advice to the public, in lieu of monetary consideration and were thus, acting as an 'investment adviser',

as defined under regulation 2(1)(m) of the IA Regulations, 2013, without obtaining the necessary registration from SEBI.

31. 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, 2013 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, 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 also has to conduct its/his activities in accordance with the provisions of IA Regulations, 2013. Further, various crucial safeguards provided under IA Regulations, 2013 include, continued minimum professional qualification and minimum net-worth requirement for investment adviser, disclosure of all conflicts of interest, prohibition on investment adviser to enter into transactions in 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.

32. The activities of the *Noticee,* executed through the *Firm*, as brought out from various materials described above including his website, seen in the backdrop of the aforesaid regulatory provisions, show that the *Noticee* was holding himself and the *Firm* out, as an Investment Advisory service and through it, he was acting as an IA. However, it is noted that neither the *Noticee* nor the *Firm* is registered with SEBI as an Investment Advisor, which is mandatory under IA Regulations, 2013.

Hence, I find that these activities/representations as were being made by the *Noticee* without holding the 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.

33. In order to ensure 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 relevant qualification, as prescribed by SEBI, and such person has to conduct its activities in accordance with the provisions of the relevant SEBI Regulations.

34. In my view, unregistered investment advisors like the *Noticee* 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 *Noticee,* on the aforementioned website has, *inter alia,* mentioned that M/s. Business Mart World provides recommendations for Stocks-cash and F&O, NSE & BSE, commodities including bullions, metals and agro-commodities traded in MCX and NCDEX with as high as 90% accuracy in the calls generated by it.

35. I find it relevant 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 also enacted IA Regulations, 2013 and has been conducting investment awareness seminars throughout the country. Curbing this breed of unregistered investment advisors is a necessity to make securities market more reliable for retail investors so that they get an opportunity to approach the persons who are actually qualified and eligible to give such kind

of advisory service to them. Permitting the investors to receive an investment advisory service from an unregistered entity, in effect means, the same is received from an unqualified person without following the safeguards prescribed in the IA Regulations, 2013. An investor receiving a service from unregistered investment advisor as compared to an investor who receives such service from a registered investment adviser in consonance with the IA Regulations, 2013, stands at a disadvantageous position in respect of his protection as an investor as envisaged under the IA regulations, 2013. 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 investment adviser. Availing of service from such persons is detrimental to the interest of the investors and such unqualified service would result in irreparable damage as the investors' money is invested based on advice 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 securities market, as victims of such services as well as their close ones also tend to lose faith in the securities market. Such an injury/detriment to the development of the securities market also qualifies as an "irreparable injury". The objective of SEBI as enshrined in the SEBI Act is not only the protection of investors but also orderly development of securities market. Therefore, the investment advisory services should only be allowed to be conducted by persons who are deemed fit under the IA Regulations, 2013 after following the safeguards mentioned therein.

36. I note that the materials available on record do not indicate the exact amount of fees collected by the *Noticee*, as a result of providing investment advice to investors in violation of the provisions of the IA Regulations, 2013. However, I find from the SCN that seven credit entries in in the SBI account number 343XXXXXX08 carried words like 'tips', 'advisory', 'stock' in their description.

Therefore, it was alleged that the funds collected through the said seven entries amounting to INR 57,500 as well as the funds collected in the Axis Bank Account No. 917XXXXXXXXXX97 amounting to INR 1,57,27,418 (through PayU Money) were on account of illegal investment advisory services offered by the *Noticee*. I also find that the SBI account number was also published on the website of the *Firm*. At the same time, link of PayU Money account was also given on the website through which funds were being collected in the aforementioned Axis Bank Account.

37. Therefore, after holding that the *Noticee* was running unauthorized Investment Advisory services through which he lured numerous gullible retail investors, who are the most vulnerable sections of participants of securities market, as the regulator, it is the statutory duty of SEBI to protect the interest of such investors. As the *Noticee* has failed to provide clients' specific details of the funds collected by him and credited into the bank accounts of the *Firm* at SBI and Axis Bank, I am constrained to hold that the amount received through the aforementioned seven transactions in SBI account no. 343XXXXXX08 and the entire amount of funds received by him in the said Axis Bank Account no. 917XXXXXXXXXX97 i.e. a total amount of INR 1,57,84,918/- represent the funds collected by him from his unauthorized Investment Advisory services only. The only method I find it feasible to redeem the investors is to direct the *Noticee* to repay such funds collected from the investors.

38. In the end, I find that the *Noticee* has named two other persons in his reply claiming that Mr. Naveen Rai and Ms. Ekta Kejriwal were his partners in the *Firm* as well as in another entity M/s Gold Tree. However, I note that an order dated August 24, 2022 has already been passed in a similar matter of unregistered investment advisory and unregistered portfolio management services that were being provided by M/s Gold Tree. In the said order, directions have been issued

against the present *Noticee* only as sole proprietor of M/s Gold Tree. At the same time, I find no evidence on record that the said two persons named by the *Noticee* were ever involved in the business of M/s Business Mart World. In all the documents available on record, the *Firm* is represented as sole proprietary concern of the *Notice* only. Thus, the above claim of the *Noticee* is seen as a bald assertion in the absence of any verifiable piece of evidence. Therefore, I find no force in the submission of the *Noticee* that he was working along with the aforementioned two partners in the *Firm*.

39. The *Noticee* has contended that he has complied with all the directions issued vide the aforementioned order dated August 24, 2022 in the matter of M/s Gold Tree. He has also furnished copies of two newspapers wherein he has issued public notice stating that both firms viz. M/s Gold Tree and M/s Business Mart World have been permanently closed since March 28, 2019. In this respect, it is observed that the instant proceedings are independent and not related to M/s Gold Tree and therefore, has no material relevance in present matter. At the same time, the public notice issued by the *Noticee* in the present matter is on his own volition and is not in compliance with any direction issued by SEBI. If anything that requires reiteration is that he was collecting funds in the name of the *Firm* till March 2019 and therefore, the above contention does not have material bearing on this proceedings, accordingly, doesn't require any further consideration.

ORDER

40. In view of the foregoing discussions and observations/findings about the activities engaged in by the *Noticee* in rendering investment advisory in an unauthorized and illegal manner, as has been established under the facts & circumstances of the case, and in order to achieve the avowed statutory object of SEBI Act, 1992, 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, 1992, while disposing of the allegations levelled in the SCN, hereby direct the following:

40.1. The *Noticee* 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 his unregistered investment advisory activities;

40.2. To give effect and implement the above direction, 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 their contact person such as names, addresses and contact details, within 15 days of coming into force of this Order;

40.3. 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;

40.4. The *Noticee* is prevented from selling his assets, properties and holding of mutual funds/shares/securities held by him in demat and physical form except for the sole purpose of making the refunds as directed above.

40.5. The *Noticee* shall resolve all the complaints pending against him and his sole proprietorship concern 'M/s Business Mart World' and file a report of such resolution with SEBI addressed to the Division Chief, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan-II, Plot No. C-7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 30 days from date of this Order.

40.6. After completing the aforesaid repayments, the *Noticee* shall file a report of such completion with SEBI addressed to the Division Chief, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan-II, Plot No. C-7, 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 restraint on sale of assets in paragraph 40.4 shall cease to operate once the refund to the investors is complete and the report as contemplated herein is filed;

40.7. The remaining balance amount, if any, which could not be refunded to the investors/complainants/clients, for any reason whatsoever, 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 Investor Protection and Education Fund maintained by SEBI;

40.8. 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 06 (six) months from the date of this Order or till the expiry of 06 (six) months from the date of completion of refunds to investors as directed in paragraph 40.1 above, whichever is later;

40.9. The *Noticee* 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 06 (six) months from the date of this Order or till the expiry of 06 (six) months from the date of completion of refunds to investors as directed in paragraph 40.1 above, whichever is later;

40.10. The *Noticee* shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 40.8 and 40.9 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.

41. The direction for refund, as given in paragraph 40.1 above, does not preclude the clients/investors of M/s Business Mart World or of the *Noticee* from pursuing the other legal remedies available under any other law, against the *Noticee* for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

42. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticee* shall remain frozen.

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

44. Obligation of the *Noticee*, 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 the *Noticee* in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

45. A copy of this Order shall be served upon the *Noticee*, all the recognized Stock Exchanges, Depositories, registrar and transfer agents and Banks for necessary compliance with the above directions.

46. A copy of this Order shall also be forwarded to the Government of Karnataka, for necessary action, if any.

Sd/-

DATE: FEBRUARY 28, 2023
PLACE: MUMBAI

S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA