National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/56177	Date: March 28, 2023
Circular Ref. No: 83/2023	

To All NSE Members

Sub: **Final Order in the matter of M/s Smart Investment Services- Prop- Ms. Rinkee Prajapati**

This is with reference to NSE circular no. NSE/INVG/43489 dated February 10, 2020, referring to SEBI order no. WTM/MPB/IMD/ILO/100/2020 dated February 07, 2020.

SEBI now vide its order no. WTM/ASB/WRO/WRO/25063/2022-23 dated March 28, 2023, has debarred the following entity 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 3 (three) years from the date of this Order or till the expiry of 3 (three) years from the date of completion of refunds to Complainants /investors /clients along with depositing of balance amounts, if any, with SEBI, as directed in paragraphs 16(a) and 16(e) of the SEBI Order, whichever is later.

Name of the Entity	PAN
Rinkee Prajapati, Proprietor M/S Smart Investment Services	CIFPP0285H

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

National Stock Exchange of India
Mr. Ojas Murudkar (Extension: 22378), Mr. Sandesh Sawant (Extension: 22383)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: Final Order in the matter of M/s Smart Investment Services- Prop- Ms. Rinkee Prajapati

WTM/ASB/WRO/WRO/25063/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B(1), SECTIONS 11(4A) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 4(1) OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

IN RESPECT OF –

NAME	PAN
RINKEE PRAJAPATI, PROPRIETOR M/S SMART INVESTMENT SERVICES	CIFPP0285H

IN THE MATTER OF M/S SMART INVESTMENT SERVICES.

BACKGROUND

1. The present proceedings emanate from a complaint dated April 16, 2019, from Amrinder Pal Singh Sehgal ("**Complainant**") forwarded by Serious Fraud Investigation Office (**SFIO**) vide their letter dated June 25, 2019 to Securities and Exchange Board of India ("**SEBI**"). In the said complaint, it was alleged that a payment of Rs. 5000 was made by the Complainant through PayUMoney, to the account of M/s Smart Investment Services Pvt. Ltd. ("**Smart Investment**"), for investment advisory services; however, despite the aforesaid payment, the Complainant had received false investment advice.

2. Accordingly, on the basis of the findings recorded in the examination report, an *Ad Interim Ex Parte Order no. WTM/MPB/IMD/ILO/100/2020 dated February 7, 2020 ("**Interim Order**"),* was issued by SEBI, against Rinkee Prajapati, Proprietor of Smart Investment ("**Noticee**"), for allegedly carrying out unregistered investment advisory services in violation of the provisions of the SEBI (Investment Advisers) Regulations, 2013 ("**Investment Advisers Regulations, 2013**"), the SEBI Act, 1992 ("**SEBI Act, 1992**") and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations, 2003**").

3. In order to protect the interests of investors and the integrity of securities market, the following directions under Sections 11(1), 11(4), 11B and 11D of the SEBI Act, 1992 were issued vide the Interim Order, to the Noticee:

i. *"The Noticee shall 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 manner whatsoever, until further others.*

ii. *The Noticee shall not access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.*

iii. *The Noticee shall not divert any funds raised from investors, kept in bank account(s) and/or in their custody.*

iv. *The Noticee shall not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.*

v. *The Noticee shall immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications, etc. in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.*

vi. *The Noticee shall provide a full inventory of all assets held in the name of the proprietorship or the proprietor, 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. *Any person while working under the above mentioned Noticee as employee or otherwise, shall cease and desist from undertaking the* *activity of investment advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.*

viii. *The Banks are directed not to allow any debits /withdrawals from or credits to the accounts of the Noticee, held jointly or severally, without the permission of SEBI. The Banks are directed to ensure that all the above directions are strictly enforced.*

ix. *The Depositories are directed to ensure that till further directions, no debits are made in the demat accounts of the Notice held jointly or severally.*

x. *The Registrar and Transfer Agents are also directed to ensure that till further directions, the securities including Mutual Fund units, held in the name of the Noticee, jointly or severally, are not transferred or redeemed."*

4. The Noticee was advised to file her reply /objections, if any, to the Interim Order within 21 days from the date of its receipt and to also indicate whether she desired to avail an opportunity of personal hearing.

5. Vide letters dated March 3, 2020, March 16, 2020 and March 17, 2020, the Noticee had requested SEBI for an opportunity of personal hearing in the matter. Thereafter, vide a letter dated July 15, 2020, the Noticee replied to the Interim Order as under:

   a. *She admittedly engaged in investment advisory services without obtaining necessary registration from SEBI as required under Regulation 3(1) of the Investment Advisers Regulations, 2013. The advices given to her clients were purely on the basis of technical analysis with the bona fide intention to optimize their gains in the securities market.*

   b. *However, she denied the allegation of involvement in fraudulent activities in violation of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(k) of the PFUTP Regulations, 2003. There was no fraudulent intention to cheat or act in a deceptive manner or cause any loss to investors /securities market. Rather, the* *default was in the nature of non–compliance with the provisions of the Investment Advisers Regulations, 2013.*

c. *With respect to the complaint received by SEBI, she submitted that:*

   (i) *The firm name is M/s Smart Investment Services Pvt. Ltd.; however, the website name is www.careinvestmentservices.com. The mention of M/s Care Investment Services Pvt. Ltd. was a typographic error which the Noticee could not rectify due to an oversight. Money was collected through the aforesaid website, which is owned by Smart Investment, the Noticee's proprietary firm.*

   (ii) *The was no procedure to issue separate payment receipts for amounts received through PayUMoney as automated receipt is already generated and sent to the payee. However, she did not deny collection of fee /subscription from any of her clients.*

   (iii) *Further, after receipt of subscription fees, the service was duly provided timely basis via messages and the Complainant's calls /grievances were addressed in a timely manner.*

d. *The credits received in Smart Investment's ICICI Bank Account for the period from July 6, 2017 to October 9, 2019, amounted to Rs. 1,23,17,120, including credits from PayUMoney payment gateway and the said credits included transactions other than investment advisory activities such as supplies for IT services to local municipal body.*

6. Pursuant to the Interim Order, an opportunity of hearing was granted to the Noticee on July 16, 2020. On the aforementioned date, the Noticee appeared for the hearing and was represented by an authorised representative, who reiterated the contents of the reply dated July 15, 2020. Upon completion of the hearing, the Noticee was granted a week's time to file additional submissions in the matter. Accordingly, vide a letter dated July 23, 2020, the Noticee filed additional written submissions as under:

a. *She never claimed herself to be a SEBI registered investment advisor. There was no communication with the Complainant regarding the status of* *her registration in order to cause harm and to defraud him nor had she hidden such information.*

b. *The Noticee submitted an Affidavit affirming that she is the proprietor of M/s Smart Investment and along with the said proprietorship firm, she is a partner in M/s Smart Investment Services partnership firm ("**Smart Investment partnership firm**").*

7. Thereafter, SEBI issued an Order no. WTM/MB/WRO/WRO/9011/2020–21 dated September 9, 2020, confirming the directions issued vide the Interim Order, against the Noticee.

8. Subsequently, upon completion of the examination in the matter, SEBI issued a Show Cause Notice no. SEBI/WRO/ILO/NM/OW/P/31124/1/2022 dated July 29, 2022 ("**SCN**"), to the Noticee for allegedly carrying out unregistered investment advisory services in violation of the provisions of the Investment Advisers Regulations, 2013, the SEBI Act, 1992 and the PFUTP Regulations, 2003. The SCN called upon the Noticee to show cause as to why suitable directions under Sections 11B(1) and 11(4) read with Section 11(1) of the SEBI Act, 1992, and further, directions for imposition of penalty under Sections 11B(2) and 11(4A) read with Sections 15HA and 15HB (for violations committed prior and up to March 8, 2019) and 15EB (for violations after March 8, 2019), should not be issued against her for the aforementioned violations.

9. The Noticee replied to the SCN vide her letters dated August 22, 2022 and November 15, 2022.

10. An opportunity of hearing was granted to the Noticee on November 15, 2022. On the aforementioned date, the Noticee appeared for the hearing and was represented by authorised representatives, viz. Ram Kishore Prajapati and Mayank Prajapati, who reiterated the contents of the replies dated August 22, 2022 and November 15, 2022. Upon completion of the hearing, the Noticee filed additional submissions in the matter vide a letter dated November 18, 2022.

11. Vide her replies dated August 22, 2022, November 15, 2022 and November 18, 2022, the Noticee *inter alia* submitted as under:

a. Smart Investment partnership firm is a partnership firm comprising of Rinkee Prajapati, Deepak Prajapati and Arti Prajapati as its partners. The main partner was Deepak Prajapati. He had a 55% share of the profits /losses of the partnership firm while Rinkee Prajapati and Arti Prajapati, being non – working partners were entitled to 20% and 25% share, respectively.

b. The Noticee had submitted a declaration dated May 31, 2022, by Deepak Prajapati, stating that he be held responsible for the acts of Smart Investment partnership firm as the other two partners were not aware of the activities carried out by the firm since the bank account were operated with his personal mobile and e–mail.

c. Since Deepak Prajapati had passed away on June 8, 2022, the Noticee cannot be held liable for the acts done by him.

FINDINGS

12. I have taken into consideration the allegations contained in the SCN along with the replies dated July 15, 2020, August 22, 2022, November 15, 2022 and November 18, 2022, filed by the Noticee. I shall now proceed to deal with the following violations as alleged in the SCN against the Noticee, in light of the replies submitted by her:

ALLEGATION NO. 1: *Noticee was alleged to have carried out investment advisory activities and held herself out as 'Investment Adviser' without obtaining a Certificate of registration from SEBI in violation of the provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the Investment Advisers Regulations, 2013*.

12.1 The relevant provisions of law as under:

Provisions of the SEBI Act:

*"**Section 12 of the 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:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a 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 immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration."

Provisions of the Investment Advisers Regulations:

*"**Regulation 3 of the Investment Advisers 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:"

12.2 From the material available on record, the following is observed:

a. The Noticee admitted to owning the proprietary firm, Smart Investment. The content available on the proprietary firm's website i.e. www.careinvestmentservices.com) as available on record, revealed the following:

i. *… There are a wide variety of clients that employ the services of investment advisers. Clients fall into two broad categories: individuals and institutions. The first category includes: individuals, trusts, families, and groups of families. Wealth (and) value Investment adviser focus on individual client based on age and financial status, as the financial goals and risk profiling is highly influenced by these factors.*

ii. *Various subscription packages relating to recommendations for stocks in cash, futures and option, etc. were offered on the abovementioned website, some of which are illustrated below:*

PREMIUM–COMMODITY				
TENURE	***MONTHLY***	***QUARTERLY***	***HALF YEARLY***	***YEARLY***
PRICING	*60,000/-*	*1,65,000/-*	*3,10,000/-*	*5,80,000/-*
BULLION /GOLD, SILVER				
TENURE	***MONTHLY***	***QUARTERLY***	***HALF YEARLY***	***YEARLY***
PRICING	*40,000/-*	*1,10,000/-*	*2,00,000/-*	*3,80,000/-*
HNI–FUTURE				
TENURE	***MONTHLY***	***QUARTERLY***	***HALF YEARLY***	***YEARLY***
PRICING	*90,000/-*	*2,40,000/-*	*4,50,000/-*	*8,50,000/-*
INTRADAY CASH				
TENURE	***MONTHLY***	***QUARTERLY***	***HALF YEARLY***	***YEARLY***
PRICING	*10,000/-*	*25,000/-*	*45,000/-*	*80,000/-*

b. The website *inter alia* contained details of an ICICI Bank Account No. 338905000056, which was linked to a PayUMoney account. From the Know Your Client ("**KYC**") details provided by PayUMoney for the aforesaid account, it is noted that the merchant name was mentioned as Smart Investment Services. As evident from the PayUMoney account payment receipt, the Complainant had made a payment of Rs. 5000 to the said PayUMoney account in lieu of investment advisory services from Smart Investment Services.

c. From the KYC details provided by ICICI Bank for the abovementioned bank account, it stood confirmed that Rinkee Prajapati was the Proprietor of Smart Investment. Further, it is observed that the ICICI Bank Account Opening Form dated June 22, 2017 ("**AOF**") also had her Aadhaar Card, Gumastha Certificate and PAN Card and the type of account mentioned therein was *'Current'* with the nature of business as *'Trading'.*

d. The total credits received in the Noticee's ICICI Bank Account No. 338905000056 for the period from July 6, 2017 to October 9, 2019, amounted to **Rs. 1,23,17,120** (alleged in the SCN as being consideration received by the Noticee in lieu of '*Investment Advice'* offered through investment advisory services), as detailed below:

BANK	***A/C OPERATED BY***	***PERIOD***	***AMOUNT IN RS.***
ICICI BANK ACCOUNT NO. 338905000056 IFSC CODE: ICIC0003389 BRANCH: MAKRONIA, SAGAR, MADHYA PRADESH	SMART INVESTMENT SERVICES: PROPRIETOR – RINKEE PRAJAPATI	6.07.2017 – 9.10.2019	1,23,17,120

12.3 The definition as given in Regulation 2(m) of the Investment Advisers Regulations, 2015 states that *'Investment Adviser'* shall mean *"any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called"*. Further, Regulation 2(l) of the Investment Advisers Regulations 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."* The aforementioned definitions when viewed in light of the observations contained in the preceding paragraphs lead me to conclude that the Noticee had indeed held herself out as *'Investment Adviser'* by offering to give *'Investment Advice'* related to investing in, purchasing and selling of securities in lieu of consideration received through various investment packages offered for subscription on its website, to prospective investors /clients.

12.4 Section 12(1) of the SEBI Act *inter alia* provides that no investment adviser shall buy, sell or deal in securities except under, and in accordance with, the conditions of a Certificate of registration obtained from the Board. Further, Regulation 3(1) of the Investment Advisers Regulations 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 the Board. It is pertinent to mention that the Noticees were never registered with SEBI, in any capacity as an intermediary. By operating as *'Investment Adviser'* as defined under Regulation 2(m) of the Investment Advisers Regulations, without obtaining registration from SEBI, I find that the Noticee violated Section 12(1) of SEBI Act read with Regulation 3(1) of the Investment Advisers Regulations.

12.5 As regards the submission made by the Noticee that the unregistered investment advisory services were carried on by Deepak Prajapati through Smart Investment partnership firm, the following is noted:

a. The Noticee admittedly was a partner in Smart Investment partnership firm along with Deepak Prajapati and Arti Prajapati.
b. Smart Investment partnership firm was created as per a Partnership Deed dated March 2, 2019.

c. Incidentally, a perusal of the website, *www.careinvestmentservices.com* as on March 24, 2023, reveals that the Noticee through her Advocate, Kalyan Singh Dangi, had issued a Notice dated August 31, 2022, to Google India Pvt. Ltd. *inter alia* stating that she is neither the owner or a partner in Care Investment Services and further, that she does not have any business relationship with the said entity. In the aforesaid Notice, the Noticee has stated that as she is a teacher and also an agriculturist, her name may be removed from the website *www.careinvestmentservices.com.* The aforementioned website also contains the following message (page details were updated on September 16, 2022): *"This is to inform that dissolution of this firm is in progress and Rinkee Prajapati is neither the owner or operator of this company, nor she have any business relationship in any way. This firm was (operated) by deceased Deepak Prajapati."*

12.6 I note that the Noticee admittedly carried on unregistered investment advisory activities from the period from July 6, 2017 to October 9, 2019, as was her submission post the Interim Order. It is only after the SCN came to be issued on July 29, 2022, that the Noticee submitted that all the unregistered investment advisory activities were carried on by her husband, Deepak Prajapati, who had subsequently passed away on June 8, 2022. I find no merit in the Noticee's contention; rather, the defense put up by her amounts to nothing more than an afterthought to ensure that liability is placed on her husband /Smart Investment partnership firm while she herself claimed ignorance of all unregistered investment advisory activities, which admittedly was carried out by her through her proprietary firm, Smart Investment.

ALLEGATION NO. 2: *Noticee was alleged to have concealed the fact that it was not registered as an Investment Adviser with SEBI and was also making representations on its website about its expertise in investment advisory over a period of time. The fraudulent modus operandi were used by the Noticee to lure and induce investors to deal in securities by availing the services of Smart Investment in violation of the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(k) of the PFUTP Regulations, 2003.*

13.1 The relevant provisions of law as under:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the Regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which ate listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Provisions of the Investment Advisers Regulations:

*"**Regulation 3 of the Investment Advisers 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:"*

Provisions of the PFUTP Regulations:

"3 Prohibition of certain dealings in securities:

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the Regulations made there under.

Prohibition of manipulative, fraudulent and unfair trade practices

4(1) Without prejudice to the provisions of Regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. [Explanation. — For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed to, or likely to influence the decision of investors dealing in securities;"

13.2 In her replies, the Noticee has denied the allegations pertaining to the violations of the provisions of the SEBI Act, 1992 read with the PFUTP Regulations, 2003. It is reiterated that the Noticee admitted to having carried out unregistered investment advisory activities through her proprietary firm, Smart Investment. Further, contrary to her submissions, the Noticee failed to disclose on Smart Investment's website that it was not registered as an Investment Adviser with SEBI while offering unregistered investment advisory services to prospective clients /investors. It was however, represented on Smart Investment's website that the Noticee was an expert in stock market analysis and was experienced in investment advisory services. It is reasonable to conclude that investors may carry a bona fide belief that any entity /individual, which portrays itself /herself as an expert in stock market analysis /experienced in investment advisory services, would be registered with SEBI under the Investment Advisers Regulations, 2015. In the absence of any material to justify such experience /expertise in stock market analysis /investment advisory service, any representation thereof is nothing more but a ploy by the Noticee to lure and induce investors to deal in securities by availing unregistered investment advisory services offered by her /Smart Investment. I therefore, find that the Noticee did indeed violate the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(k) of the PFUTP Regulations, 2003.

REFUND OBLIGATION

14.1 The SCN had *inter alia* called upon the Noticee to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, should not be issued against her. In the instant proceedings, the amount of fees /consideration collected by the Noticee as a result of providing unregistered *'Investment Advice'* to investors, amounted to **Rs. 1,23,17,120** *(on the basis of amounts credited to the Noticee's ICICI Bank Account No. 338905000056, for the period from from July 6, 2017 to October 9, 2019*). The credit narrations observed in the Noticee's ICICI Bank Account included words such as *equity call, share (service), share fee (advance), for investment, trade.* In this context, the following is noted:

i. During the hearing held on July 16, 2020 (see paragraphs 5 and 6), the Noticee had contended that *"The credits received in Smart Investment's ICICI Bank Account included credits from PayU Money payment gateway and the said credits included transactions other than investment advisory activities such as supplies for IT services to local municipal body".*

ii. During the personal hearing held on July 16, 2020, SEBI had advised the Noticee to submit documentary evidences (a) certifying the nature of each and every transaction recorded in the said bank account and (b) for corroborating /substantiating that such amounts were for activities other than unregistered investment advisory services.

iii. Vide a reply dated July 23, 2020, the Noticee submitted a summary of amounts totaling Rs. 28,93,755.97, stating that the same pertained to payments received from friends, family, self–account, online work from Nagar Palika or Government Organization, CMO Nagar Panchayatrahatga, failed transaction amounts, etc.

iv. Post the Confirmatory Order and upon a consideration of the Noticee's reply dated July 23, 2020, SEBI issued a letter dated November 5, 2020, *inter alia* seeking details of fees collected by the Noticee.

v. However, in her replies dated November 5, 2020 and November 20, 2020, the Noticee stated that she had stopped functioning as an Investment adviser and was therefore, not in a position to provide the information sought by SEBI.

14.2 Having regard to the above narration of facts, I am not inclined to accept the contentions raised by the Noticee with regard to the correctness of the amounts arrived at in the SCN as fees collected in lieu of unregistered *'Investment Advice'* offered to her clients /investors for the following reasons:

(a) In her reply dated July 23, 2020, the Noticee while annexing a document titled *'Annexure 1'* containing the details of amounts credited in the ICICI

Bank Account No. 338905000056, had offered her remarks on each amount reflected therein such as *'take loan for working capital – from friends and family', 'sundry deposit from friends', 'contra entry credit', etc.* The Noticee had submitted that the same was evidence of amounts which were not fees collected in lieu of unregistered *'Investment Advice'.*

(b) However, on an examination of the above mentioned Annexure 1, it is observed that the Noticee had not provided any other evidence for me to conclude that such amounts were indeed not fees collected in lieu of unregistered *'Investment Advice'.* In fact, when SEBI had sought additional information from the Noticee four months thereafter i.e. vide letter dated November 5, 2020, post the Confirmatory Order, for ascertaining the amount collected by the Noticee in lieu of unregistered *'Investment Advice',* the Noticee surprisingly replied that she was not in a position to provide the information (see paragraph 14.1.v.).

(c) It was only after the above fact finding effort made by SEBI that the SCN was issued. The amount indicated therein as the Noticee's refund liability was Rs. 1,23,17,120 i.e. fees /consideration received in the abovementioned ICICI Bank Account, from clients /investors /complainants in respect of unregistered investment advisory activities.

(d) Even in these proceedings, during the course of the hearing and thereafter, the Noticee has still not submitted any documentary evidences (i) certifying the nature of each and every transaction recorded in the said bank account and (ii) for corroborating /substantiating that such amounts were for activities other than unregistered investment advisory services.

14.3 In light of the findings in the preceding paragraphs, I am of the considered view that the Noticee is liable to refund an amount of **Rs. 1,23,17,120/-** which was collected as fees in lieu of unregistered *'Investment Advice'* offered to her clients /investors, and accordingly, a direction to the Noticee to refund such amount will be in the interest of investors in the securities market.

VIOLATION OF SECTIONS 15HA, 15 HB AND 15EB OF THE SEBI ACT, 1992.

15.1 The SCN had *inter alia* called upon the Noticee to show cause as to why suitable directions for imposition of penalty under Sections 11B(2) and 11(4A) read with Sections 15HA and 15HB (for violations committed prior and up to March 8, 2019) and 15EB (for violations committed after March 8, 2019), should not be issued against her.

15.2 In this regard before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions for facility:

Penalty for default in case of investment adviser and research analyst. Section 15EB of the SEBI Act. "*Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees."*

Penalty for fraudulent and unfair trade practices. Section 15HA of SEBI Act, 1992: *"Penalty for fraudulent and unfair trade practices. 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."*

Penalty for contravention where no separate penalty has been provided. Section 15HB of SEBI Act, 1992. *"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."*

15.3 As stated in the SCN, for the violations which were committed prior and upto March 8, 2019, Section 15HB of the SEBI Act, 1992, has been invoked for imposition of monetary penalty. Further, for the violations which were committed after March 8, 2019, Section 15EB of the SEBI Act, 1992, has been invoked for imposition of monetary penalty.

15.4 Upon a consideration of the above penalty provisions, I find that Sections 15HB and 15EB of the SEBI Act, 1992, have been invoked for the alleged violation committed by the Noticee of holding herself out as a SEBI registered *'Investment Adviser'* without obtaining a Certificate of registration. I note that the said allegation has been clearly established in the preceding paragraphs. I also note that the Noticee was engaged in providing investment advisory services without obtaining necessary registration of SEBI as required under Section 12(1) of the SEBI Act, 1992 and Regulation 3(1) of the IA Regulations. I therefore, find that penalty under Sections 15 HB and 15EB is clearly attracted.

15.5 I also note that Section 15HA of the SEBI Act, 1992, has been invoked in respect of the Noticee for allegedly indulging in fraudulent activities in violation of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(k) of the PFUTP Regulations, 2003. I note that the said allegation have also been clearly established in the preceding paragraphs. I, therefore, find that penalty under Section 15HA of the SEBI Act, 1992, is clearly attracted.

15.6 It is relevant to mention that for the imposition of penalty under the provisions of the SEBI Act, 1992, guidance is provided by Section 15J of the SEBI Act, 1992. The said provision reads as under:

> ***"Factors to be taken into account while adjudging quantum of penalty.***
> ***15J****. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default.*
> *Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

15.7 I note that the SCN has not brought out the quantum of profit /gains made by the Noticee in promising assured returns and charging its clients, service fees. I however, note from the complaints received from the clients that investors have suffered losses due to the actions of the Noticee.

15.8 In consideration of the above, I shall now proceed with the directions and imposition of monetary penalties.

ORDER:

16. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4) and 11B(1) read with Section 19 of the SEBI Act, 1992, Sections 11(4A) and 11B(2) of the SEBI Act, 1992 read with Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby direct that:

   (a) The Noticee, **Rinkee Prajapati – Proprietor, Smart Investment Services,** shall within a period of three months from the date of coming into force of this Order, refund the money received from any complainants /investors /clients, as fees /consideration or in any other form, in respect of its unregistered investment advisory activities.

   (b) The Noticee shall cause to effect a public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, inviting claims from Complainants /investors /clients within a period of fifteen (15) days from the date of this Order. The said public notice shall detail the modalities for refund, including the details of the contact persons such as names, addresses and contact details. A period of two (2) months from the date of the publication of the public notice shall be provided to the Complainants /investors /clients for submitting their claims.

   (c) The repayments to the complainants /investors /clients shall be effected only through Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments.

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

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

(f) The Noticee is restrained from selling her assets, properties and holding of mutual funds /shares /securities held by her in demat and physical form except for the sole purpose of making the refunds /depositing balance amount with SEBI, as directed above. Further, banks are directed to allow debit only for the purpose of making refunds to the Complainants /investors /clients who were availing the unregistered investment advisory services from the Noticee, as directed in this Order, from the bank accounts of the Noticee.

(g) The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of **3 (three) years** from the date of this Order or till the expiry of **3 (three) years** from the date of completion of refunds to Complainants /investors /clients along with depositing of balance amounts, if any, with SEBI, as directed in paragraphs 16(a) and 16(e), whichever is later.

(h) Upon submission of reports on completion of refunds to complainants /investors /clients to SEBI and deposit of the balance amount if any, with

SEBI, the direction at paragraph 16(f) shall cease to operate within fifteen days thereafter.

(i) The Noticee shall not undertake, either during or after the expiry of the period of debarment /restraint as mentioned in paragraph 16(g), either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

(j) The Noticee is hereby imposed with, the monetary penalties, as provided hereunder:

NAME	**PROVISIONS UNDER WHICH PENALTY IMPOSED**	**PENALTY (IN RS.)**
RINKEE PRAJAPATI – PROPRIETOR, SMART INVESTMENT SERVICES	1. SECTION 15 HA	FIVE (5) LAKH
	2. SECTION 15HB (FOR VIOLATIONS COMMITTED PRIOR TO 8.03.2019)	ONE (1) LAKH
	3. SECTION 15EB (FOR VIOLATIONS AFTER 8.03.2019)	ONE (1) LAKH
TOTAL		**SEVEN (7) LAKH**

(k) Noticee shall pay the aforesaid monetary penalty within 45 days from the date of receipt of this Order. The Noticee shall remit / pay the said amount of penalty only through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in. The details/ confirmation of e-payment should be sent to "The Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for : (like penalties /disgorgement /recovery/settlement amount/legal charges along with order details)	

17. The above direction for refunds /repayment to clients /investors and depositing the balance amount with SEBI, as given in paragraphs 16(a) and 16(e) above, does not preclude such complainants /investors /clients to pursue other legal remedies available to them under any other law against the Noticee for refund of money or deficiency in service.

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

19. A copy of this Order shall be served upon the Noticee. A copy of this Order shall also be forwarded to the recognised Stock Exchanges, Depositories, Banks and Registrar and Transfer Agents for necessary compliance with the above directions and also the Government of Madhya Pradesh for its information.

Place: Mumbai
Date: March 28, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA