National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/56547	Date: April 28, 2023
Circular Ref. No: 112/2023	

To All NSE Members

Sub: **Final Order in respect of Vishavjit Singh Sendhav (Proprietor of M/s Capital Finance Advisory's)**

SEBI vide its order no. WTM/SM/WRO/WRO/26035/2023-24 dated April 28, 2023, has hereby debarred the below 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 06 (six) months from the date of the SEBI 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 the SEBI order, whichever is later.

Sr. No.	Name of the Entity	PAN
1	Mr. Vishavjit Singh Sendhav, Sole Proprietorof M/s Capital Finance Advisory's	IAOPS3519E

This Order shall come into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in). Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.
In case of any further queries, members are requested to contact the following officials:

Mr. Gaurav Damani (Extension: 22387), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

National Stock Exchange of India

For and on behalf of

National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: Final Order in respect of Vishavjit Singh Sendhav (Proprietor of M/s Capital Finance Advisory's)

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. Vishavjit Singh Sendhav, Sole Proprietor of M/s Capital Finance Advisory's**	**IAOPS3519E**

Background

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a complaint dated September 23, 2020 wherein it was alleged that Mr. Mr. Vishavjit Singh Sendhav (hereinafter referred to as '***Noticee***'), through his sole proprietorship concern M/s Capital Finance Advisory's (hereinafter referred to as '***Firm***'), had assured high return from equity market and F&O to the complainant while trading on its advice. Vide the aforesaid complaint, the complainant has also provided the details of website being run by the *Noticee* viz. *http://financecapitals.in*. 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 was noted in the course of the said examination that the website *http://financecapitals.in* was inactive at the time examination was underway.

Consequently, the cached webpages of the aforementioned website were retrieved and examination of the said webpages revealed that the website as mentioned above contained information which apparently suggest that through the said website the *Firm* had declared that it was offering investment advisory services in stocks-cash and F&O, commodities, including bullions, metals, currency and agro-commodities etc.

3. It was observed from the examination of information available in the cached webpages of the aforementioned website that an account with ICICI Bank Limited bearing Account Number 075XXXXXXX56 was published therein to enable the customers for making payment of the fee/consideration against availing the services being offered by the *Noticee*.

4. From a perusal of Account Opening Form (in short '**AoF**') and KYC documents pertaining to the said Bank account as available in the records and furnished by the ICICI Bank Limited, it is observed that the aforesaid Bank Account Number 075XXXXXXX56 is a Current Account opened in the name of Capital Finance Advisory's (Proprietor: Mr. Vishavjit Singh Sendhav). The mobile number given in KYC documents for the aforementioned ICICI Bank Account is 7999274152. The same mobile number was also available and advertised in the archived website of the *Firm*. Further the address of the *Firm*, as mentioned in its website viz. 302, Alankar Market, Dewas, Madhya Pradesh, was also matching with its address mentioned on the Gumastha certificate issued by District Labour Office, Dewas and the same was also provided by the *Noticee* to ICICI Bank while opening the aforementioned bank account.

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. It was observed that the *Noticee,* at the time of inviting the investors to invest in securities market as per various kinds of investment advisory services rendered to the clients through the *Firm*, was also making tall claims before the public through its website by declaring *inter alia,* as '*We understand the uncertainty and every moves of stock market*' etc. Such claims were supplemented with unsubstantiated statements such as '*We have an excellent research team who provides genuine and most authentic research in stock, Market-Cash, F&O, traded in NSE, Commodity Market…..traded in MCX, NCDEX…*' etc.

7. It is noted from the material available on record that the above mentioned website contained disclosure that the *Firm* provided various kinds of advisory services pertaining to the securities market for which there were corresponding prices/fees depending on the products being offered by the *Noticee* as mentioned on its website which were as following:

Table 1: Subscription plans:

S. No.	Product/Scheme	Monthly Price (in INR)	Quarterly Price (in INR)	Half-Yearly Price (in INR)	Annual Price (in INR)
1	Stock Cash	NA	18900	33600	54600
2	Stock Future	NA	21600	38400	62400
3	Option Call-Put	NA	18900	33600	54600
4	NIFTY-Bank NIFTY	5000	13500	24000	42000
5	MCX Combo	NA	40500	72000	117000
6	Bullion Services	NA	27000	48000	78000
7	Metal Services	NA	21600	38400	62400
8	Energy Services	NA	21600	38400	62400
9	NCDEX	NA	40500	72000	117000

10	FOREX Services	10000	27000	48000	78000
11	Stock Cash Premium	40000	108000	192000	312000
12	Stock Future Premium	40000	108000	192000	312000
13	Option Premium	40000	108000	192000	312000
14	NIFTY-Bank NIFTY Premium	30000	81000	114000	234000
15	Bullion Premium	40000	108000	192000	312000
16	Premium NCDEX Pack	50000	145000	240000	420000
17	Equity Delivery	15000	40500	72000	117000
18	HNI Pack	150000	405000	720000	1170000
19	BTST-STBT Future	15000	40500	72000	117000

8. An examination of cached pages of the website of the *Firm* showed that funds were being collected by the *Noticee* through the aforementioned account held by it with ICICI Bank Limited and a total of INR 54,71,873 had been received by the *Noticee* in the said ICICI Bank Account during the period of February 26, 2020 to February 07, 2022. A deeper examination of the credit entries in the aforementioned bank account showed that credit entries were supported by narrations such as "advisory fee", "service fees/charge", "subscription", "tips", "stock advisor", "registration fee", "membership fee", etc. Further, few credit entries show the name of an advisory product, i.e. BANK NIFTY that was specifically mentioned in the narration.

9. In the course of examination, SEBI sent a letter dated December 15, 2021 (also sent via email dated December 16, 2021) and a reminder email dated December 22, 2021 to the *Noticee* advising him to submit the details of all the investors who had availed investment advisory services from it along with nature of activities against which such amounts were received in the aforesaid Bank Account. The *Noticee* was also advised to provide details of all the bank accounts in which the

investment advisory fees were received/collected by the *Noticee* from such investors. However, no response to the aforementioned letter and emails was submitted by the *Noticee*.

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 October 17, 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 11(1), 11B(1) and 11(4) of SEBI Act. The *Noticee* was further called upon to show case as to why suitable penalty under Sections 11(4A) read with 11B(2) of the SEBI Act should not be imposed upon him under the provisions of Section 15EB of SEBI Act, for alleged violation of provisions of law referred hereinabove.

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 him, in that regard.

12. I note from the records available before me that the SCN was sent to as many as three addresses of the *Noticee* found through his documents and KYC details

submitted to ICICI Bank Limited. The SCN was delivered to the address of the *Noticee* located at Dewas, Madhya Pradesh, which was available on his Aadhaar Card and registration certificate of the *Firm*, as issued by District Labour Office, Dewas. The SCN was delivered to the aforementioned address through Speed Post on October 28, 2022 and the tracking report of delivery of such SCN, as downloaded from the website of India Post is available on record. However, no reply was submitted by the *Noticee* in response to the aforementioned SCN. Subsequently, in compliances with the principles of natural justice, an opportunity of personal hearing was granted to the *Noticee* on January 17, 2023. The date of personal hearing was intimated to the *Noticee* vide letter dated December 07, 2022 which was delivered to the *Noticee* on December 10, 2022 through Speed Post, a proof of which in form of tracking report downloaded from India Post website is available on record. However, the *Noticee* failed to appear for the personal hearing granted to him.

13. As all the possible modes of service of the SCN and hearing notice has been followed and the SCN as well as the hearing notice have been duly served on the *Noticee* through Speed Post, and yet the *Noticee* has failed to submit his response to the SCN as well as failed to appear for personal hearing granted to him in the matter, I am compelled to proceed with the matter ex-parte on the basis of facts/material on record.

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

14. I have carefully perused the allegations made against the *Noticee* and the sole proprietary concern M/s Capital Finance Advisory's, as recorded in the SCN and other materials available on record. It is alleged in the SCN that the *Noticee* was engaged in providing Investment Advisory Services through sole proprietorship firm M/s Capital Finance Advisory's and for that purpose, he was using the

website namely http://financecapitals.in. 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 in ICICI Bank Account Number 075XXXXXXX56, opened in the name of M/s Capital Finance Advisory's. 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 on September 23, 2020 against the *Firm* alleging it to be involved in unauthorized Investment Advisory activities. From scrutiny of the website of the *Firm* viz. http://financecapitals.in, 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 obtained by SEBI and the same were

examined. It was observed from such examination that the *Noticee* was making certain irresponsible and outlandish and unsubstantiated claims about his understanding of the securities market 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 '*We understand the uncertainty and every moves of stock market*' etc. Such claims were supplemented with unsubstantiated statements such as '*We have an excellent research team who provides genuine and most authentic research in stock, Market-Cash, F&O, traded in NSE, Commodity Market…..traded in MCX, NCDEX…*' etc.

16. I note from the material available on record that certain queries were raised to the *Noticee* vide letter dated December 15, 2019 which was served upon the *Noticee* vide email dated December 16, 2019. In the said letter, SEBI had sought details of investors who had procured investment advisory services from him and the amounts paid by them. The *Noticee* was also advised to provide details of bank accounts wherein such considerations/fees were deposited. However, no reply has been filed by the *Noticee* to these queries, till date.

17. I note from the material available on record that the *Noticee* had opened a bank account in the name of the *Firm* with ICICI Bank Limited having Account Number 075XXXXXXX56 wherein all the fees received against the investment advisory services being rendered by it/him were being deposited by the *Noticee*. I note from the materials available on record that the KYC form for said ICICI Bank account was signed by the *Noticee* as the sole proprietor of the *Firm*. A perusal of the said Bank Account shows that the *Noticee* had started receiving money in the said ICICI Bank Account from February 26, 2020 onwards and the last deposit in the said account is seen to have been made on October 06, 2021.

18. Further, a perusal of bank statement of the aforementioned bank account maintained at ICICI Bank Limited reveals that there have been numerous deposits into the said account wherein the deposits have been backed by narrations by using the terms such as, stocks, tips advisory etc. An illustrative list of such narrations found in the said account held with ICICI Bank having account number 075XXXXXXX56 is cited as under:

Transaction Date	Narration	Credit (in INR)
28-02-2020	BIL/INFT/001931256907/Advisoryfee/	31000
29-02-2020	BIL/INFT/001932528730/Advisoryfee/	87500
11-06-2020	NEFT-N163201158308302-RUBY KHEMANI ADVISORY SERVIC	2000
02-09-2020	UPI/024616326545/advisory/shahnawazalam37/ INDUSIND	3500

19. It has been stated above that vide the SCN, the *Noticee* was called upon to respond as to why the alleged activities as narrated in the SCN be not held as in the nature of Investment Advisory, which were allegedly carried out without having any valid and lawful registration. It is noted that the *Noticee* has chosen not to file any reply or response refuting the allegations made in SCN and has rather preferred to remain absent from even availing the personal hearing granted to him. In the absence of any submission contradicting the allegations made in the SCN, it is evident from the aforementioned description of credit entries found in the aforementioned ICICI Bank Account number 075XXXXXXX56 that the funds being received in the said bank account were actually being received as fees against rendering Investment Advisory services only. Further, numerous other credit entries were found wherein different names were appearing in the

descriptions which appear to be the names of the investors who had availed and paid against the said investment advisory services being offered by the *Firm*.

20. I find that the name of neither the *Noticee* nor the *Firm* appear in the list of registered Investment Advisors available with SEBI. Having gone through the relevant provision governing the registration of an entity as an Investment Advisor, it is observed that to initiate the activity of Investment Advisor, a person is required to be registered first with SEBI and accordingly, needs to obtain a registration certificate, before one can undertake investment advisory services. The only liberty or relaxation granted under the IA Regulations, 2013 is related to an entity which is already engaged in such activity before the notification of the said regulation and such entities have been permitted to continue with their investment advisory services activity provided an application to this effect is filed with SEBI and said activity may be continued till the disposal of the application so filed with SEBI seeking registration under the IA Regulation, 2013. However, in the instant matter, I have already observed above that no such claim has been advanced by the *Noticee* so as to fall under the aforesaid proviso to Regulation 3(1) of the IA Regulations, 2013, hence, the said relaxation doesn't apply to the case of the *Noticee* in the present matter.

21. From the aforesaid narration of facts and the allegations made in the SCN, I find that the *Noticee*, acting through his sole proprietary concern, was indeed 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. *http://financecapitals.in*.

22. 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."*

23. In the light of the aforesaid definitions and the content published on the aforementioned website of the *Noticee* clearly describing the *Firm* as 'India's one of the best stock advisory' read with the allegations imputed in the SCN, I note that the *Noticee*, through his website *http://financecapitals.in* 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 were 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.

24. 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 directly into the ICICI Bank Account number 075XXXXXXX56, which is registered in the name of the firm M/s Capital Finance Advisory's. The details of this payment method were also provided under the payment option section on the aforementioned website being run by the *Noticee*, for guiding the customer to deposit their fees into the said Bank account.

25. Further, as already mentioned above, the credit entries in the ICICI Bank account of M/s Capital Finance Advisory's are supported by narrations such as the names

of the clients with their corresponding deposit amounts matching with different payment plans mentioned in the Tables 1 above thereby clearly demonstrating the fact that the monies that were received into the said ICICI Bank Account no. 075XXXXXXX56, were received by way of proceeds from the business operations of the *Noticee* as Investment Adviser. Considering the fact that the website 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 ICICI Bank Account was specified in the website intimating the investors to deposit the fees into the aforementioned bank account, it leads me to an unassailable conclusion that the said pay-in amounts as reflected in the said Account with ICICI Bank were nothing but the amounts received towards consideration in lieu of the advisory services offered by the *Noticee.*

26. 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*), followed by his failure to make any submission to refute the 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.

27. In this regard, multiple opportunities have been provided to the *Noticee* to explain the numerous credit entries in his account, which he has failed to submit on all these occasions. In the absence of any evidence to the contrary, it can be conclusively inferred that all the funds that have been credited to the ICICI Bank Account No. 075XXXXXXX56 during the period of February 26, 2020 to February 07, 2022 amounting to INR 54,71,873, the details of which have been provided as annexure of SCN, were actually received by the *Noticee* in lieu of providing

investment related services as indicated on the website of the *Firm*. In this context, I find necessary to refer to the observations of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the Order dated February 11, 2014 in the matter of Sanjay Kumar Tayal and Ors vs SEBI (Appeal No 68 of 2013), where SAT had observed that "........................... *As rightly contended by Mr Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges leveled against them in the show cause notices ......*"

28. In view of the aforesaid discussions and overwhelming factual findings pertaining to the advisory activities that were 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* in fact constituted "investment advice" and the *Noticee* was providing investment advice through his sole proprietorship firm M/s Capital Finance Advisory's, in lieu of consideration which was received and credited into the account of the *Firm* at ICICI Bank. Therefore, there is no ambiguity left that the *Noticee* and his sole proprietary firm M/s Capital Finance Advisory's 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.

29. It is relevant to note here that in order to protect the interest of investors and to preserve the integrity of the securities market, the IA Regulations, 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 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 net-worth requirement for investment adviser, disclosure of all conflicts of interest, prohibition on investment adviser to enter into transactions on its own account which is contrary to the advice given by investment adviser to its clients, for a period of 15 days from the day of such advice given , monetary risk profiling of investors, maintaining documented process for selecting investments for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

30. The activities of the *Noticee,* executed through the *Firm*, as has been 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.

31. 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.

32. 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. Capital Finance Advisory's provides recommendations for Stocks-cash and F&O, NSE & BSE, commodities including bullions, metals and agro-commodities traded in MCX and NCDEX and is India's best stock advisory firm.

33. 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 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 the unqualified person without following the safeguards prescribed in the IA Regulations, 2013. An investor receiving a service from unregistered investment advisor *vis-a-vis* 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 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.

34. Therefore, after holding that the *Noticee* was running unauthorized Investment Advisory services through which he lured numerous gullible retail investors to take his unauthorized investments advices, who are the most vulnerable sections of participants of securities market, as the regulator, it is the duty of SEBI to protect the interest of such investors in its attempt to develop securities market. As the *Noticee* has failed to provide specific details of the funds collected by him and credited into the bank account of the *Firm* at ICICI Bank, I take the entire amount of funds received by him in the said ICICI Bank Account no. 075XXXXXXX56 i.e. an amount of INR 54,71,873/- treating the same as 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, forthwith.

35. I further note that the SCN calls upon the *Noticee* to show cause *inter alia* as to why penalty under Sections 15EB read with Sections 11(4A) and 11B(2) of the

SEBI Act should not be imposed for the violations of provisions of IA Regulations, as alleged in the SCN. I note that the powers vested under Section 11B(2) of SEBI Act are without prejudice to the powers to issue directions under Sections 11(1), 11(4A) and 11B(1) of the SEBI Act. In this regard, I note that Section 15EB of the SEBI Act provide as under:

SEBI Act

Penalty for default in case of investment adviser and research analyst

15EB. *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.*

36. The aforesaid findings discussed in the present order clearly establish that the *Noticee* has acted in violation of provisions of Regulation 3(1) of IA Regulations by acting as Investment Advisor without being registered with SEBI as so.

37. In view of the detailed factual analysis and deliberations as well as my observations recorded in the foregoing paragraphs of this order with regard to wrongdoings on the part of the *Noticee*, as established in the present Order, I find that the aforesaid *Noticee* is liable for issuance of appropriate directions including for refund of amount collected by him as investment advisory fee as well as debarment from accessing the securities market and dealing in securities under Sections 11(1), 11B(1) and 11(4) of SEBI Act, as well as for imposition of appropriate penalty under Section 11B(2) read with Sections 15EB of SEBI Act.

38. In this regard, I find that Section 15J of SEBI Act provide factors to be considered while imposing the penalties. The said factors are common under both these provisions and have been reproduced below:

(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.

At the same time, it is well settled position of law that these three factors are not exhaustive in nature and the adjudicating authority, while deciding penalty in a matter, may take into account any other factor beyond the aforementioned factors.

39. In this regard, I find that the amount of disproportionate gain or unfair advantage accrued to the *Noticee* could not be ascertained due to non-submissions of information on the part of the *Noticee*. Therefore, SEBI could not ascertain the actual gains made by him. In such circumstances, I have taken the whole amount collected by the *Firm* during the period of its operation viz. February 26, 2020 to February 07, 2022 which is INR 54,71,873/- as unfair gain made by the *Noticee*. At the same time, the whole violation has continued for a period of almost two years, which is a significant factor in imposition of penalty upon the *Noticee*.

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 in facts & circumstances of the case, and in order to achieve the avowed 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 Capital Finance Advisory's' 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.

40.11. In addition to the aforementioned direction, I impose a monetary penalty of INR 10,00,000 (Ten Lakh Rupees only) on the *Noticee* under the provisions of Section 15EB of SEBI Act for the violation of provisions of Regulation 3(1) of IA Regulations.

41. The direction for refund, as given in paragraph 40.1 above, does not preclude the clients/investors of M/s Capital Finance Advisory's 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. The Noticee is directed to pay the penalty as detailed above within 45 (forty-five) days from the date of service of this order by way of online payment through following path on the SEBI website: www.sebi.gov.in/ENFORCEMENT→ Orders→ Orders of Chairman/Members →Click on PAY NOW or at the link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. The *Noticee* shall forward the details/confirmation of penalty so paid through e-payment to "The Deputy General Manager, Indore Local Office, Securities and Exchange Board of India, 104-105, Satguru Parinay, Opposite C-21 Mall, A.B. Road, Indore - 452010, Madhya Pradesh" in the format given in the Table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

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

47. A copy of this Order shall also be forwarded to the Government of Madhya Pradesh, for necessary action, if any.

Sd/-

DATE: APRIL 28, 2023 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA