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National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/56697	**Date: May 12, 2023**
Circular Ref. No: 121/2023	

To All NSE Members,

Sub: **SEBI Order in the matter of Capital Gain Research, Proprietor: Ruchit Gupta**

SEBI vide its Order No. WTM/AB/WRO/WRO/26227/2023-24 dated May 12, 2023, has debarred Shri Ruchit Gupta Proprietor of M/s Capital Gain Research (PAN - AUUPG9437F) 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 six (6) months from the date of this order or till the expiry of six (6) months from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in para 20(a) and 20(e) of SEBI order , whichever is later.

The order comes into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page 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:

Mr. Pranav Thakur (Extension: 22481), Mr. Sandesh Sawant (Extension: 23335)
Direct No: 022-26598417/18 Fax: 022-26598195

National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in the matter of Capital Gain Research, Proprietor: Ruchit Gupta

WTM/AB/WRO/WRO/26227/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Noticee	PAN
1.	M/s Capital Gain Research Proprietor: Shri Ruchit Gupta	AUUPG9437F

In the matter of Unregistered Investment Adviser

1. The present proceedings emanate from a show cause notice dated **August 09, 2021** (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against M/s Capital Gain Research, Proprietor: Shri Ruchit Gupta (hereinafter referred to as "**Noticee**"), wherein it was alleged that the Noticee was engaged in investment advisory services without obtaining a certificate of registration from SEBI in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations, 2013**"). The SCN called upon the Noticee to show cause as to why suitable directions should not be issued against the Noticee under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992.

2. I note that the SCN *inter alia* alleges the following:

    i. SEBI had received a complaint on October 23, 2017 from Surendra Urav (hereinafter referred to as "**complainant**") against the Noticee wherein it was *inter alia* alleged that the Noticee had charged Rs. 14,000/- and committed fraud against the complainant. The complaint also stated that the Noticee made a commitment of giving profit of Rs. 5000 to Rs. 10,000/- per day but the complainant made losses of Rs. 50000.

ii. Upon further examination, a website named www.capitalgainresearch.com was found, which was being operated to give investment advisory services.

iii. The details of four bank accounts were mentioned on the website for payment of fees for the said advisory services.

3. The SCN was served on the Noticee by Speed Post. However, no reply was received from the Noticee. In order to comply with the principles of natural justice, the file was placed before me on December 27, 2021 for granting a hearing and a hearing was granted to the Noticee on April 06, 2022. On the said date the Noticee did not appear. Vide email dated November 01, 2022 the Noticee was advised to file written submissions, if any, within seven days. The Noticee, vide email dated November 06, 2022 responded as follows:

> *"This is Rachit Gupta from (M.P). Recently I got a mail about filing additional submission. We have already resolved a client complaint. His name is Surendra Oraon from Jharkhand. I attached the copy of complaint withdrawal by the client and returned the disputed amount slip. Here I want to say some points:*
>
> - *Firstly, I sincerely apologize about my mistakes*
> - *When I started this work, I didn't know about SEBI registration later I realized that any advisory firm must be registered in SEBI then I tried to take SEBI registration number. but I failed due to many complications, then I stopped that work permanently in 2017-18.*
> - *Since I am not active in this field, now I am doing a job in Kotak Health insurance."*

The Noticee, along with his reply, has attached a letter from the complainant stating that he is withdrawing his complaint.

Consideration of submissions and findings:

4. I have considered the allegations made in the SCN along with the findings of the examination by SEBI stated therein, the reply of the Noticee and material available on record.

5. In this regard, I note that the definition of Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013 provides as follows:

> "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, Regulation 2(1)(l) of IA Regulations, 2013 states as follows:

> "investment advice means 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:
> Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;"

6. I note that, the website, www.capitalgainresearch.com *inter alia* claimed as follows:

> "We are here to help you to grow your financial position by short term investing on trading in Indian stock market. Our flexible packages are also suitable to everybody so you can choose our package as per your requirement. We provide trade alerts via sms every day and live tips".
>
> "Capital Gain Research, a trusted name in the financial services arena, provides you with the entire amount of financial advisory services under one ceiling. It is one of the few organizations providing research and information on Indian Capital markets mainly based on technical analysis and enjoys a strong reputation among investors, brokers and researchers. Our team is highly skilled with experienced analysis. Our efforts are to provide you more & more profit in every trade".
>
> "Our main services Stock future, stock option, nifty future, MCX, BTST/STBT. Our services 50. Our clients 2000".

7. From the above, I note the following:

a. The website claimed that Capital Gain Research was a trusted name in the financial services arena, and provided the entire amount(sic) of financial advisory services under one ceiling.

b. The website itself was claiming that financial advisory services were being offered through the website.

c. The website also mentioned various packages and their pricing which further gives an indication that the service provided through the website were in the nature of investment advice.

d. In his reply the Noticee has submitted as follows:

"We have already resolved a client complaint. His name is Surendra Oraon from Jharkhand. I attached the copy of complaint withdrawal by the client and returned the disputed amount slip. Here I want to say some points:

- *Firstly, I sincerely apologize about my mistakes*
- *When I started this work, I didn't know about SEBI registration later I realized that any advisory firm must be registered in SEBI then I tried to take SEBI registration number. but I failed due to many complications, then I stopped that work permanently in 2017-18.*
- *Since I am not active in this field, now I am doing a job in Kotak Health insurance."*

The above mentioned reply indicates that the Noticee has accepted that he was rendering advisory services, without having any registration from SEBI.

Therefore, I find that through the website www.capitalgainresearch.com advice relating to investing in, purchasing, selling or otherwise dealing in securities were being offered. I further note that the following packages were being offered on the website:

- Stock cash
- Stock future
- Stock option
- Nifty future
- Nifty option

- MCX
- HNI
- BTST/STBT
- Currency Market Tips

I note that the Noticee has not contested the various services alleged to be offered by him.

8. I further note that, investment advisory services were being offered to clients through the website www.capitalgainresearch.com *in lieu* of consideration, which is clear from the fact that the website provided bank account details for payment. Four bank account details were mentioned on the website:

1.	AXIS BANK NAME – CAPITAL GAIN RESEARCH A/C NO.915020040657632 ACCOUNT TYPE – CURRENT ACCOUNT RTGS/NEFT/IFSC CODE – UTIB0001022 BRANCH - SHIVPURI
2.	HDFC BANK NAME –CAPITAL GAIN RESEARCH ACCOUNT TYPE – CURRENT ACCOUNT A/C NO.50200019797688 RTGS/NEFT/IFSC CODE – HDFC0000907 BRANCH - SHIVPURI
3.	ICICI BANK NAME – CAPITAL GAIN RESEARCH A/C NO. 144905500302 ACCOUNT TYPE – CURRENT ACCOUNT RTGS/NEFT/IFSC CODE – ICIC0001449

	BRANCH - SHIVPURI
4.	BANDHAN BANK NAME – CAPITAL GAIN RESEARCH ACCOUNT TYPE – CURRENT ACCOUNT A/C NO. 10150001151227 IFSC CODE – BDBL0001373 BRANCH - SHIVPURI

9. I also note that the complainant had *inter alia* provided details of payment of advisory fees made to Capital Gain Research (Axis Bank Account no. 915020040657632) on September 12, 2017. From the bank statement of the Axis Bank Account No. 915020040657632 (also mentioned on website www.capitalgainresearch.com), it is observed that the amount of Rs 8001/- from the complainant has been credited to the Axis Bank Account No. 915020040657632 of Capital Gain Research.

10. Additionally, the examination of the aforesaid bank accounts mentioned on the website, revealed the following:
    a. From the KYC, it was observed that Mr. Ruchit Gupta was the proprietor and authorized signatory of Capital Gain Research.
    b. The following observations are made on the said accounts:

Account	Status of account
AXIS BANK DETAIL: NAME – CAPITAL GAIN RESEARCH A/C NO.915020040657632 ACCOUNT TYPE – CURRENT ACCOUNT RTGS/NEFT/IFSC CODE – UTIB0001022 BRANCH - SHIVPURI	Credit of Rs.56,00,810 in the Axis bank account for the period 01-04-2016 to 20-06-2019. Account closed on 20-06-2019
HDFC BANK DETAIL NAME –CAPITAL GAIN RESEARCH ACCOUNT TYPE – CURRENT ACCOUNT A/C NO.50200019797688 RTGS/NEFT/IFSC CODE – HDFC0000907 BRANCH - SHIVPURI	Credit of Rs.5,02,400 in the HDFC bank account for the period 06-06-2016 to 01-08-2018. Account closed on 01-08-2018
ICICI BANK DETAIL NAME – CAPITAL GAIN RESEARCH A/C NO. 144905500302 ACCOUNT TYPE – CURRENT ACCOUNT RTGS/NEFT/IFSC CODE – ICIC0001449 BRANCH - SHIVPURI	Credit of Rs.6,18,800 in the ICICI bank account for the period 07-06-2016 to 12-11-2018. Account closed on 12-11-2018
BANDHAN BANK DETAIL NAME – CAPITAL GAIN RESEARCH ACCOUNT TYPE – CURRENT ACCOUNT A/C NO. 10150001151227 IFSC CODE – BDBL0001373 BRANCH - SHIVPURI	Credit of Rs.11,78,972 in the Bandhan bank account for the period 26-05-2016 to 12-11-2018. Account closed on 12-11-2018.

11. I note that the website was being run in the name of Capital Gain Research. From the KYC information of the bank accounts, I find that Mr. Ruchit Gupta was the proprietor of Capital Gain Research. Thus, I find that the Noticee (M/s Capital Gain Research/ its proprietor Mr. Ruchit Gupta) was rendering investment advice as defined under Regulation 2(1)(l) of IA Regulations, 2013 through the said website and received consideration *in lieu* of the investment

advise and thus, acting as an investment adviser as defined under Regulation 2(1)(m) of IA Regulations, 2013.

12. Further, the total amount collected in the four bank accounts mentioned on the website www.capitalgainresearch.com is as follows:

Bank	Amount received
AXIS BANK A/C NO.915020040657632	Rs.56,00,810
HDFC BANK A/C NO.50200019797688	Rs.5,02,400
ICICI BANK A/C NO. 144905500302	Rs.6,18,800
BANDHAN BANK A/C NO. 10150001151227	Rs.11,78,972
Total	Rs.79,00,982

In the above accounts there are multiple credit transactions from various entities. Hence, it is inferred that the said bank accounts were used for receipt of fees from various entities for the purpose of providing investment advisory services. I note that the Noticee has not made any submissions denying the same or explaining the source of credits received in the four bank accounts.

13. From the aforesaid facts, I find that the Noticee was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, *in lieu* of consideration. I note that if an entity is engaged in providing 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 *in lieu* of consideration, including entities which are holding themselves out as investment advisers, are covered by the definition of "Investment Adviser" as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, the Noticee received Rs. 79,00,982/- in the bank accounts mentioned on its website for the investment advisory services provided. Hence, I find that the Noticee was engaged in the business of providing investment advice to its clients, for

consideration, and thus, acting as investment advisers, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

14. I also note that, it is imperative that any person carrying out investment advisory activities must necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992 and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

> "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:"

Regulation 3 (1) of the IA Regulations, 2013 read as follows:

> "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. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 has been framed by SEBI which provide various safeguards to ensure that the interest 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 first obtain a certificate of registration from SEBI as mandated 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 it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice

to the clients, mandatory 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.

16. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations, 2013:

(i) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 alongwith requisite non-refundable application fee;

(ii) The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:

a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

(iii) Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

17. The activities engaged in by the Noticee, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticee was acting as an Investment Adviser, although the Noticee was not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticee without holding the mandatory 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.

18. The Noticee in the three bank accounts mentioned on its website www.capitalgainresearch.com, as detailed in para 10 and 12 had received Rs. Rs.79,00,982 from the date of opening of these accounts till June 2019 through unregistered investment advisory activities, as observed above. The Noticee has not produced any material to show the sources of this fund. If the Noticee wishes to provide any explanations regarding the same, the same may be considered/ confirmed by the Chartered Accountant on production of reliable proof by the Noticee while certifying the refunds of investment advisory fees made by the Noticee, as is being directed in para 20.

19. I note that in the case of Shri C. Paranitharan and others and Trend Market Advisory Services, SEBI had passed orders dated July 05, 2022 and July 07, 2022, respectively, *inter alia* directing the Noticees therein to refund the fees or

consideration received from investors in respect of their unregistered investment advisory activities. In the respective appeals filed against these orders by the respective Noticees, Hon'ble SAT vide common order dated September 21, 2022 *inter alia* directed the appellants therein into deposit the balance amount after making refunds to investors, with SEBI. It was also directed that the balance amount deposited with SEBI shall be kept in escrow account for a period of one year and be distributed to any claimants and thereafter, the remaining amount, if any, will be deposited in the Investor Protection and Education Fund.

Directions:

20. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4) and 11B read with of Section 19 of the SEBI Act, 1992, hereby direct that:

a) The Noticee shall within a period of three months from the date of coming into force of this order, refund the money received from any complainant/ investors, as fees or consideration or in any other form, in respect of his unregistered investment advisory activities;

b) 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 contact persons such as names, addresses and contact details, within 15 days of coming into force of this order;

c) The repayments to the complainants / 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;

d) After completing the refund as directed in para 20 (a) above, within a period of 15 days, the Noticee shall file a report detailing the amount refunded to SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai - 400051. The report should be duly certified by an independent Chartered Accountant and indicate the amount, mode of payment by banking transactions, name of the parties, communication address, mobile numbers and telephone numbers etc.;

e) The remaining balance amount 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;

f) The Noticee is restrained 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/ depositing balance amount with SEBI, as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/investors/complainants who were availing the investment advisory services from the Noticee and depositing balance amount with SEBI, 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 are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 6 months from the date of this order or till the expiry of 6 months from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in para 20(a) and 20(e) above, whichever is later;

h) Upon submission of report on completion of refunds to complainants/ investors to SEBI and deposit of the balance money with SEBI, if any, the direction at para 20(f) above shall cease to operate within 15 days thereafter;

i) The Noticee shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 20 (g) above, 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.

21. The direction for refund and depositing the balance amount with SEBI, as given in para 20 (a) and (e) above, does not preclude the clients/investors of the Noticee to pursue the other legal remedies available to them under any other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

22. This order comes into force with immediate effect.

23. A copy of this order shall be sent to the Noticee, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

-Sd-

Date: May 12, 2023 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA