National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/56908	**Date: May 31, 2023**
Circular Ref. No: 142/2023	

To All NSE Members

Sub: SEBI Order in the matter of M/s Mission Believe

SEBI vide its Order no. WTM/AB/NRO/NRO/26999/2023-24 dated May 31, 2023, has restrained following entities 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) of this order, whichever is later.

Sr. No.	Name of the Entity	PAN
1	M/s Mission Believe	AAYFM7507N
2	Shri Kamaldeep Singh	BHKSPS0236E
3	Shri Harleen Singh	ANKPS5827L
4	Shri Pal Singh	BDKPS9758P
5	Shri Sumit Wadhwa	AAOPW8621R

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 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 email us at dl-invsg-all@nse.co.in

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 M/s Mission Believe

WTM/AB/NRO/NRO/26999/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

Noticee No.	Name of the Noticee(s)	PAN
1.	M/s Mission Believe	AAYFM7507N
2.	Shri Kamaldeep Singh	BHKSPS0236E
3.	Shri Harleen Singh	ANKPS5827L
4.	Shri Pal Singh	BDKPS9758P
5.	Shri Sumit Wadhwa	AAOPW8621R

In the matter of Unregistered Investment Adviser

*(The aforesaid entities are hereinafter individually referred to by their respective names or Noticee number and collectively as "**the Noticees**")*

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1. The present proceedings emanate from a show cause notice dated June 15, 2022 (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") to the Noticees. Noticee no. 1 is a partnership firm and other Noticees are partners in Noticee no. 1. The SCN alleged that the Noticees were *prima facie* 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 Noticees to show cause as to why suitable directions should not be issued against the Noticees under Sections 11(4) and 11B of the SEBI Act, 1992.

2. The facts of the case, as mentioned in the SCN are as follows:

   a. SEBI had received a complaint dated March 14, 2018 against Noticee no. 1, stating that the Noticee takes registration fee ranging from Rs. 10,000 to Rs. 50,000 in the name of education/training and provide false promise of profit of Rs. 2,500 to Rs. 10,000 per day or much more in commodity market MCX. In the name of education/training the Noticee sold their tips as tips provider under the name of MCX advisory. The complainant also provided certain documents such as pamphlet, screenshots of social media posts of Noticee no. 2 and contents of website of Noticee no. 1, i.e. www.missionbelieve.com.

   b. Examination of the aforesaid complaint including analysis of extracts of the archived website of Noticee no. 1, social media posts, bank account statement of Noticee no. 1 and the information provided by the complainant and Noticees revealed that Noticee no. 1 was providing stock tips/MCX advisory via SMS for a fee and with an assurance of return. The terms and conditions as mentioned in the registration form signed by the complainant and countersigned by one of the partners of Noticee no. 1 mentioned providing tips, pamphlets of Noticee no. 1 mentioned that Noticee no. 1 is an "*MCX Advisory*" and notifies the general public that one "*can earn Rs. 1,500/- to Rs. 2500/- per day without risk*", the power point presentation made by Noticee no. 1, under the heading "*Our Services*" mentioned "*tips via SMS*" and that after registration user will get minimum 1 and maximum 5 tips through SMS in a day on active market days and screenshots of social media posts of Noticee no. 2 shows the following:

Mar 2 at 09:02	*Feb 7 at 08:39*
MISSION BELIEVE MCX	*MISSION BELIEVE MCX*
Report 01-03-2018	*Report 06-02-2018*
ACTIVE CALLS = 11	*ACTIVE CALLS = 09*
TGT HIT = 11 S.L HIT = 00	*TGT HIT = 09 S.L HIT = 00*
ACCURACY = 110 %	*ACCURACY = 100 %*

   c. As on July 03, 2019, the website of Noticee no. 1, www.missionbelieve.com was non-operational. Further, Noticee no. 1 in its replies dated December 13, 2018 and February 27, 2019, *inter-alia,* admitted that the contents mentioned in their website was against certain rules and regulations of SEBI, thus they have discontinued the website. From the archived pages of said website, it was observed that the following was mentioned on the said website:

> *"Welcome to Mission Believe: We predict daily trends as well as the trends for next 3-7 days. We will also guide you when to buy/sell and will help you in maximizing your profits."*
>
> *"Welcome to Mission Believe: Only Profit Tips provide the latest updates of trading market as to what is happening or going to happen instead of what had happened."*
>
> *"Welcome to Mission Believe: Predictions made are based upon research & analysis carried on by our expert team, which are expected to be quite accurate and deemed to be reliable"*
>
> *"Welcome to Mission Believe: No. 1 MCX Advisory"*
>
> *"About Mission Believe: A trusted name in MCX Market, provides you with the entire gamut of financial services under one ceiling.*
>
> *"Our teams highly skilled with experienced analysis. Our efforts are to provide you more & more profit in every trade. We are here to help you grow your financial position by Short-Term investing or trading in MCX Market. Our flexible packages are so suitable to everybody, so you can choose our packages as per your requirement. We provide trade alerts via sms every day and live tips"*
>
> *"Our Mission: To provide easy to understand updated on MCX market and bring New Clients to join this league."*
>
> *"Complete MCX Tips:*
>
> - *We provide you complete MCX Tips*
> - *Bullion Tips*
> - *Energy Tips*
> - *Base Metal Tips"*
>
> *"Our Vision: To create best customer support while all market up and downs, so that customer can make maximum profit out of his investment."*

"Mission Believe is committed to emerge as a globally recognized stock exchange with an endeavour to create a nation of informed investors. To be one of the most trusted & globally reputed financial distribution companies."

"We believe in sharing a forthright and respectful relationship with our business partners and employees. We consider them both as our team associates who work together Succeed together. We are here to help you grow your financial position by Short-Term investing or Trading in Shining. Indian Stock Market with minimum risks."

"Our Refund Policy: missionbelieve.com totally focuses on the client needs, what they want and what they need in trading services, it is our duty and ambition to prove our self in respect of our Subscribers needs. We take many measures if any of our subscriber unsatisfied in our services, they team also expertise in solving problem between our calls or tips by which they can made huge money in trading on our trading tips in different commodities according to market trends. Client is subscribing to our services after taking trail from our company website and client is making payment after seeing our trial so it's a mutual understanding between client and company, company do not force any client or trader to make payment, once payment had done client have to take services till the period he had paid. Because client had already taken free trial before payment so no refund will be done."

d. Noticee no. 1 in its reply dated February 27, 2019, *inter alia*, submitted its client list detailing the name of the client, place, and amounts received from its clients etc. As per the list, Noticee no. 1 had collected fee from 1,426 clients in the denominations of Rs. 5000/- and Rs. 5900/- through Bank/Cash mode, which amounts to Rs. 63.03 lakhs. It had also informed that refund have been made till date to 284 clients out of 1,426 clients and for rest 1,142 clients, the Noticee claimed to have initiated the process to refund. The Noticees were advised to provide a client wise repayment/refund report, duly certified by an auditor in respect of the mentioned claims of refunds to clients. However, no further response was received from Noticee no. 1 in this regard.

e. The bank statement of Noticee no. 1's HDFC Bank A/c No: 50200033145240 for the period April 01, 2018 to January 31, 2020, was also perused. It was is observed that the bank account was opened on August 21, 2018 with a balance of Rs. 51,000/-. Subsequently, the account received credits from various entities in multiples of Rs. 5,000/- and Rs. 5,900/- till February 18, 2019. The credit balance of the bank account as on January 30, 2020 was Rs. 17,04,272. Further, after February 18, 2019, there were a series of debit entries from the bank account in the range of Rs 4,000/- to Rs. 10,000/-. Noticee no. 1 informed that these entries were for refund of fees/securities, payments of GST, firm expenses, commission, rent, withdrawal by partners, etc.

f. In view of the above, it was observed that Noticee no. 1 and its partners claimed to be an "*MCX Advisor"* and rendered investment advisory services by providing trade alerts/tips through SMS to various clients. It is very evident from the disclosure made in the website of Noticee no. 1 that they provide tips in Bullion, Energy and Base Metal for which Noticee no. 1 charges clients in the range of Rs. 5,000/- to Rs. 5,900/-. Further, as on January 30, 2020, Noticee no. 1 has collected approximately Rs. 63.32 lakhs through clients under the garb of providing trade alerts/tips to its clients.

g. As per regulation 3 (1) of the IA Regulations read with section 12 (1) of the SEBI Act, registration is mandatory for a person carrying out the activities of an investment adviser. Thus, it was concluded that Noticee no. 1 and its partners were rendering investment advisory services and collected fees from various clients for the period January 2018 to February 2019 without necessary SEBI registration, and accordingly violated Section 12 (1) of the SEBI Act read with provisions of Regulation 3 (1) of the IA Regulations.

h. The SCN had thus called upon the Noticees to show cause as to why suitable directions including debarment and refund under sections 11B/11(4) of the SEBI Act, 1992, for violations of the section 12 (1) of the SEBI Act and Regulation 3 (1) of the IA Regulations, should not be issued against them.

3. The SCN was sent to all the Noticees through Speed Post and was delivered to Noticee nos. 2, 4 and 5. Subsequently, the SCN was affixed at the available

addresses of Noticee nos. 1 and 3. The reply filed by Noticee no. 2 on his behalf and on behalf of Noticee no. 1 was received on July 13, 2022. Noticee no. 4 vide his letter dated July 12, 2022 sought additional time of 30 days to file his reply and thereafter, filed his reply dated August 11, 2022. The matter was placed before me on August 17, 2022 for granting personal hearing to the Noticees. The hearing in the matter was fixed for November 03, 2022. The hearing notice dated September 01, 2022 was served on the Noticees and was delivered to all the Noticees except Noticee no. 1. Affixture of the hearing notice at the address of noticee no. 1 was attempted on September 24, 2022 but could not be done as the entity was not found at the address and was therefore served through newspaper publication in English daily newspaper Hindustan Times, Ludhiana edition, Hindi daily newspaper Dainik Jagran, Ludhiana edition and Punjabi daily newspaper Ajit, Ludhiana edition on October 22, 2022. On the scheduled date of hearing, Noticee nos. 2 (also representing Noticee no. 1), 4 and 5 appeared before me and made their submissions. Noticee no. 3 neither appeared for hearing nor sought any adjournment. Therefore, hearing *qua* all the Noticees was concluded on November 03, 2022. Noticee nos. 2 and 5 also filed their written submissions dated November 07, 2022 and November 10, 2022, respectively. The submissions made by the Noticees, *inter alia*, are as follows:

Noticee nos. 1 and 2

a. Noticee no. 1 denies providing stock tips/MCX advisory via SMS for a fee with an assurance for return. Pamphlet attached by the complainant was not printed by Noticee no. 1 and there is no contact number or address of Noticee no. 1 mentioned on the pamphlet. When we learnt of the same, we inquired from the phone number printed on such material without our approval. After inquiry, we traced that person and got hold of all the pamphlets and these were destroyed. We also directed all our team members doing promotional activities not to print or distribute any such material without our approval.

b. Power Point presentation attached by the complainant is owned by us but this is part of our education material through which we were explaining our plan of working and how our clients can earn money by operating MCX market using our tips which will be provided via SMS when the whole project will be started. This presentation was prepared by taking information from the public domain of various such agencies which are providing advisory services. The registration form printed by Noticee no. 1 where a future plan was printed for information of the customer. This Tips via SMS service was never started by us as Noticee no. 1 has never purchased any SMS service package from TRAI to provide any investment advice via SMS to any of its registered member. This was just a future plan which was not executed.

c. Screenshots mentioned in the SCN are admitted but these were dummy messages which were put by Noticee no. 2 on facebook page to show our level of experience in generating calls by observing online trading but it is nowhere mentioned that we generated these actual calls for executing business in MCX online trading as Noticee no. 1 never purchased any SMS service package from TRAI to provide any investment advice via SMS to any of its registered member.

d. It is accepted that some content on our web site was inadvertently put in place which was found to be in violation of some SEBI Rules and subsequently, that information was removed from the web site and later the whole web site was closed. It is submitted that at that time the website was under construction and not fully operational.

e. It is denied that vide email dated July 23,2020 Noticee no. 1 admitted that it carried out investment advisory services which was subsequently discontinued post January, 2019. Noticee no. 1 has never carried out investment advisory service. Noticee no. 1 has not received any fee for providing training from any person after December 2018 and has already refunded suitable amount to nearly 700 clients. We closed our company office from May 2019. Due to COVID and a dispute between our partners as well as fraudulent withdrawal of huge money by Noticee no. 4 from our bank Account (already complaint filed against him in EOW at Ludhiana), our bank account has been placed with no debit by Bank. A court case has also been filed by the undersigned against Noticee no. 4 in Ludhiana which is still going on for recovery of amount withdrawn and releasing the amount of balance in the bank account. Due to these reasons, further refund process is stopped. List of clients to whom refund has been made is enclosed.

f. Merely credits in our bank account does not prove that money credited was taken from registered members for providing investment advice.

g. Regarding allegations of collecting fee for providing tips, it is submitted that Noticee no. 1 charged one-time fee in the range of Rs.5000/- to Rs.5900/- and paid 18% GST on the fee collected for providing basic education and training about how to open trading account, do fund transfer and buy or sell commodities in MCX which is not an investment advice as per definition mentioned under regulation 2(1) (I) of the IA Regulations. Noticee no. 1 and its partners cannot be termed as Investment Advisors as they have not rendered any such service to any person. Therefore, Regulation 2(m) also not applicable to Noticee no. 1 and its partners.

h. Noticee no. 1 had taken fee for providing basic education about how to open trading account, do fund transfer and buy or sell commodities in MCX only and given repeated training for more than 1 year as SEBI has not given go ahead to provide investment advice service for which a monthly fee of Rs. 10,000/- per month was proposed to be charged as mentioned on our website and Registration Form also. Noticee no. 1's bank account statement clearly shows that Noticee no. 1 has never taken Rs. 10,000/- monthly from any registered member but taken only one-time training fee in the range of Rs. 5,000/- to Rs. 5,000/- + 18% GST i.e. Rs. 5,900 from its registered customers and has already paid GST @ 18% on the fee collected.

i. In view of submissions given in above paras, there is no cause to issue any direction under section 11B/11(4) of the SEBI Act 1992 and Noticee no. 1 and its partners have not violated section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations.

j. The complaint dated March 14, 2018 filed by complainant has been settled by the Noticees on December 13, 2018. The complainant has agreed that he had made the complaint due to some misunderstanding which have been sorted out and he withdrew his complaint. This fact has already been informed to SEBI.

k. Noticee no. 1 has four partners and due to stopping of operations of Noticee no. 1 (including closure of office) from May 2019 due to above said case opened by SEBI in March 2018, a dispute started among the partners as to how to go forward to do this business. Some of our registered members started compelling us either to start operations or refund the training fee charged by us which was non-refundable. Even our family members were worried about our future due to which we were under great mental pressure. As the correspondence between us and SEBI was prolonged, we were facing mental harassment and were unable to bear pressure from some of our registered members and started refunding the training fee (by deducting some percentage as expenses incurred by the company before closure of office) which was even non-refundable. Due to immense, mental pressure, one of our partners Noticee no. 4 started asking us to stop refund and distribute the amount in account balance among partners. When denied, he did a fraud by stealing some unused cheques from the cheque books of the company and some days later transferred Rs. 29 lakhs from the company bank account to the bank accounts of two other persons known to him by using these stolen cheques. We immediately approached our bank and got the account converted into no debit account to stop further withdrawal by him and filed police complaint against him on the same day. We filed a court case also against him for getting the amount back but proceedings are delayed due to COVID-19 and it is taking too much time to finalize the case. Also, due to this case going on with SEBI and then fraudulent withdrawal case of a partner, I could not focus on any other work which resulted in no income since May 2019. Beside these financial constraints, we are able to refund some amount to about 700 members but further refund process is stopped due to debit freeze in bank account and un-accounted fraudulent withdrawal by a partner. Even other partners are also not happy with the refund process and are not cooperating.

l. Access to email ID of the company is also restricted to Mr. Harleen Singh only and other partners are not aware about the receipt and issue of mails since closure of our office.

m. I was told that SEBI has not received any list of customers to whom company has refunded money and I replied that this list was enclosed with the reply sent over mail and also with the hard copy of the reply sent. It was again told that this refund of 50% of the training fee was completely by the company on their own to keep its clients with them so that once company will get license, these clients will again be engaged in the proposed business plan. None of the clients have ever complained about refund of money to the company. Moreover, as already mentioned in my reply to the notice received from SEBI that due to fraudulent withdrawal of money by Noticee no. 4, one of our partners from the current account of the company, the account was placed under debit freeze by me and now, Bank is asking signatures of all partners to un freeze the account which is not possible to dispute among us. All records of the company including list of clients was taken away by the said partner and I even having major stake holder as per Partnership Deed is not having any record with me.

Noticee no. 4

n. I met Noticee no. 2 a few years ago who apprised me about Mission Believe and I got associated with him. My activities while working there were generally of an assistant for helping the clients in filling their registration forms, follow up with them for different day to day requirements, go to bank for deposit/withdrawal of cash, deposit of cheques etc. and to do other day to day office work given by Noticee no. 2 and there was no assignment where I could take my independent decisions or initiative and till leaving the organization I was not taking independent decisions.

o. Since he did not offer me salary on regular basis, he advised me to become partner in his firm where he kept my profit share to the extent of 0.10% only. My hard earned savings were also invested on his advice without any gains. Being innocent in this area I could not understand the game plan of Noticee no. 2. A 0.10% partnership is nothing and nobody would like to join for this and had I been having little understanding of these things I would not have accepted these terms. It has come to my understanding that in partnership legally all partners are liable for any violations. Had I understood at that time I would have never become partner on these terms where object was not to reward the partner but to punish him for the fault of Noticee no. 2, who is the main owner of Noticee no. 1.

p. During the course of working, I realized that Noticee no. 2 was not providing any education on stock market, rather, he was providing tips to the persons on stock market. The complainant made a complaint to SEBI before my joining. When SEBI issued the notice on complaint then I understood the game plan of Noticee no. 2 and the fact that registration under the SEBI law was mandatory for this work and it was not done. I immediately pressurized Noticee no. 2 for SEBI registration and firm got Investment Advisory License.

q. In the meantime, number of complaints started coming and I left the organization and after that I do not know whether Noticee no. 2 has changed the partnership or not because since then we are not on talking terms. You will appreciate and understand what can be the role of person who is having 0.10% share and is not a promoter of organization.

r. Under the judicial system there is a concept of 'complete justice'. Technically SEBI law may make me liable for role as partner but under the 'complete' justice' concept, you will feel convinced that already lot of injustice has been done with me and with 0.10% share and role I cannot have any say in the organization, more particularly, when disputes between me and main partner are there and I am convinced that in giving 0.10% share, fraud has been played with me and I request SEBI to do complete justice with me and I should not be held liable for any role in the organization. I have also lost everything by associating with Noticee no. 1 and I should also be helped to recover my hard earned money. I deny all the allegations on me because with 0.10% share no person can have power or control on the affairs and all the decisions are of main partner.

Noticee no. 5

s. I joined Noticee no. 1 on July 10, 2018 (as per Partnership deed) and complaint date was March 14, 2018, which is before my joining date. Moreover, I was only a sleeping partner with Noticee no. 1 and my share was only 0.1 %. The bank account of Noticee no. 1 is operated by other three partners and I am not authorized to operate any bank account of Noticee no. 1. I am not part of any marketing or promotional activities, if any, done by mission believe. Before two years, I had resigned from Noticee no. 1. As per my agreement with Noticee no. 1 at the timing of joining, as per agreement I am not part for any legal/ financial/ other liabilities of Noticee no. 1. The said agreement and other documents are with other partners. As per best of my knowledge, Noticee no. 1 didn't provide any MCX investment advisory services.

<u>Consideration of issues and findings</u>

4. I have considered the allegations made in the SCN along with the findings of the examination by SEBI, respective replies filed by the Noticees, submissions made during personal hearing and written submissions filed thereafter.

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;"

6. Further, Regulation 2(1)(l) of IA Regulations, 2013 provides 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;"

7. In this regard, I note that the examination in the matter was initiated by SEBI based on a complaint. The complainant had alleged that Noticee no. 1 was taking fee ranging in the name of education/training but was providing tips under the name of MCX Advisory and making false promise of profit. The complainant also provided certain documents including pamphlet, brochure, registration from and power point presentation distributed by Noticee no. 1.

8. The SCN alleged that from the registration form, pamphlets and power point presentation released by Noticee no. 1 and the contents of the website of Noticee no. 1, the following was noted:

   a. The registration form signed by one of the partners of Noticee no. 1 mentions that Noticee no. 1 provides tips.

   b. The pamphlets notify the general public that Noticee no. 1 is an MCX Advisory and that one can earn between Rs. 1,500/- to Rs. 2,500/- per day without risk.

   c. The power point presentation includes a slide on "Our Services" which mentions "Tips via SMS", wherein user needs to fill registration from and register his mobile number to receive minimum 1 and maximum 5 tips in a day.

   d. Screenshots of social media posts of Noticee no. 2 who is a partner of Noticee no. 1 (with 99.7% share of profits) shows claims of calls made by Noticee no. 1 to have achieved the targeted value with an accuracy of 100%.

   e. The archived pages of the website of Noticee no. 1 i.e. www.missionbelieve.com shows that on the said website it was disclosed that Noticee no. 1 predicts daily trends as well as trends for next 3-7 days, it also guides users when to buy/sell and maximize profits. The webpages also show that Noticee no. 1 claimed to be No. 1 MCX Advisory. The website, under the heading "Our Services" mentions that Noticee no. 1 provides MCX tips, bullion tips, energy tips and base metal tips.

9. Noticee no. 1 and 2 in their submission have denied providing stock tips/MCX advisory for a fee. The Noticee have accepted the contents of the registration form but contended that the contents of the registration form show future plan of the Noticees for information of the customer and contended that based on such future plan it cannot be said that they were providing investment advisory services. The Noticees have denied printing the pamphlets, which was provided by the complainant and submitted that after learning about the pamphlets, the Noticees traced the person responsible and destroyed the pamphlets. The Noticees have accepted that the power point presentation was made by them but submitted that this was part of educational material through which the Noticees explained their plan of working and how the clients could earn money by using the tips provided by the Noticees when the said service will be started. But this service was not started by the Noticees. The Noticees have also accepted that the social media posts were made by them but contended that these were dummy messages put up on Facebook page to show their level of experience in generating calls and these messages do not mention that the Noticees generated these actual calls for executing business in MCX online trading. The Noticees have also accepted the contents of the website www.missionbelieve.com and that some of the content was inadvertently put there and when the Noticees found out that these were in violation of SEBI rules, that information was removed from the website and later the whole website was closed. The Noticees have also contended that they never purchased any SMS package from TRAI to provide any investment advice via SMS to any of their registered members and that mere credits in their bank account does not prove that money credited was taken from registered members for providing investment advice.

10. I note that Noticee no. 1 is a partnership firm and Noticee nos. 2 to 5 are the partners in Noticee no. 1. Noticee nos. 2 to 5 were inducted into the firm as partners vide partnership deed dated May 01, 2018 with all of them having a 1% share in the profits of the firm. Vide deed of partnership dated June 05, 2018, the share of Noticees in profits of Noticee no. 1 was revised with Noticee no. 2 having 97% share and other Noticee having a share of 1% each. Further, vide deed of partnership dated July 10, 2018, the share of partners was again revised with Noticee no. 2 having 99.70%

share and other Noticees having a share of 0.1% each in the profits of Noticee no. 1. As per all the aforementioned deeds of partnership, the business of the partnership firm, i.e. Noticee no. 1 has been mentioned as "*business of financial advisory services in relation to commodity exchange, research and analysis, market entry strategy, customer need analysis etc.*" Therefore, as per the deed of partnership of Noticee no. 1, the business of Noticee no. 1 was, *inter alia*, financial advisory services in relation to commodity exchange and not educational/training as contended by Noticee no. 1 and 2.

11. From the contents of the power point presentation, pamphlet, website and registration form issued by Noticee no. 1, as provided by the complainant, it is abundantly clear that investment advisory services were being offered by Noticee no. 1 for consideration. Noticee nos. 1 and 2 have also accepted the contents of power point presentation, the website and registration form. However, the Noticees have contended that these were part of a future plan to offer these advisory services and that no such service was provided by the Noticees as they did not purchase any SMS plan from TRAI to provide such advisory service and provide tips through SMS. In support of their contention the Noticee nos. 1 and 2 have also stated that they collected either Rs. 5,000/- or Rs. 5,900/- as fee for educational services from their clients and not Rs. 10,000/- which was mentioned in the registration form as fee for providing full service including tips via SMS. However, I note that even the contents of the power point presentation, the website and registration form shows that the said advisory services were being offered by Noticee no. 1 and there is no indication being made that these were part of some future plan. Further, from the account statement of the Noticees' bank account held with HDFC Bank, as provided by the Noticees themselves, numerous credits for various amounts such as Rs. 10,000/-, Rs. 11,800/-, Rs. 35,400/-, Rs. 51,000/- are noticed, where the narration includes words/phrases such as "mission believe", "fees" "fees mission believe", "advisory fees", which shows that the Noticees were collecting fees from their clients for the advisory services as mentioned in the registration form and the contention of the Noticees in this regard is factually incorrect and therefore untenable. I again note here that the contents of the registration from have been accepted by the Noticees.

It is clear from the above that the services offered by the Noticees to provide tips and MCX Advisory services were in the nature of investment advisory services. The Noticees have contended that as they did not purchase any SMS package from TRAI, they did not provide any tips via SMS advisory service. In this regard, I note that SMS packages are not provided by TRAI but by telecom service providers. Further, not purchasing any SMS package by the Noticees from any telecom service provider does not prove that the Noticees were not providing investment advisory services to their clients or that they could not send SMS to their registered clients. On the other hand, contents of pamphlets etc. coupled with credits received in the bank accounts of the Noticees, show that Noticees were providing investment advisory services. Therefore, the contention of the Noticees in this regard, is untenable. Even if, the contention of the Noticees that the mention of providing tips to registered clients in the power point presentation, website and registration form was part of a future plan which was not executed, were to be considered, I note that in their reply to the SCN, the Noticees have, *inter alia,* submitted that *"Some of our registered members started compelling us either to start operations or refund the training fee charged by us which was non-refundable"*, which shows that the Noticees collected fee form their registered clients by offering these tips and MCX advisory services which are in the nature of investment advisory services. By their own admission, the Noticees have claimed to have refunded fee to some of their clients when the clients complained that either the Noticees start the service offered to them or refund their fee. The above statement of the Noticees make it even more clear that the fees was collected from the clients to provide tips and investment advisory services. Therefore, the contention made by the Noticees in this regard are of no avail to the Noticees, as it is clear that Noticee no. 1 offered the service of providing tips and "MCX advisory" services to their clients and collected fee for such services. In this regard I note that one of the directions being issued to the Noticees in the matter is to refund the fee to their clients which has been collected by the Noticees. I also note that Noticee no. 4 has accepted that Noticee no. 1 was providing investment advisory services but it was Noticee no. 2 who was acting on behalf of Noticee no. 1 and providing such investment advisory services and that Noticee no. 4 had no independent decision making role. The role of the partners of Noticee no.

1 has been discussed in later paragraphs. In view of the above, I find that 'investment advice' as provided under Regulation 2(1)(l) of the IA Regulations, 2013, in lieu of consideration, was being offered by Noticee no. 1.

12. The details of fee collected was sought by SEBI from the Noticees. As per the information provided by the Noticees and as contained in the SCN, Noticee no. 1 collected Rs. 63.03 lakhs as fee from 1,426 registered clients. 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, will be covered by the definition of "Investment Adviser" as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, Rs. 63.03 lakhs were collected by Noticee no. 1 as fee, in lieu of the investment advisory services provided by Noticee no. 1. Hence, I find that Noticee no. 1 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.

13. I also note that, it is imperative that any person carrying out investment advisory activities has to 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:"*

14. 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 have 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.

15. 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:

    a. 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 along with requisite non-refundable application fee;

    b. 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:

        (i) 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;

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

(iii) 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.

c. 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.

16. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that Noticee no. 1 was holding itself out and was acting as an Investment Adviser, although Noticee no. 1 was not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations were being made by Noticee no. 1 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.

17. With respect to the role of respective partners of Noticee no. 1, I note that Noticee no. 1 was a partnership firm and as per deed of partnership dated May 20, 2014, Noticee no. 2 had 99.97% share in the profits of Noticee no. 1. Noticee nos. 3, 4 and

5 had a share of 0.1% each in the profits of Noticee no. 1. I note that Noticee no. 4 and 5 have contended that they were minor partners in Noticee no. 1 and they had a share of only 0.1% each in the profits of Noticee no. 1. Further Noticee no. 4 had contended that he was not taking any independent decisions for the firm. In this regard, I note that as per Sections 2(a), 4, 18 and 25 of Indian Partnership Act, 1932 and Section 27 of the SEBI Act 1992, every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner and miniscule share in the profits or non-participation in decision making does not absolve such partners from their liability. Therefore, the partners of Noticee nos. 1, i.e. Noticee nos. 2, 3, 4 and 5 are also liable for violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of IA Regulations, 2013.

18. 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 to 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.

19. From the material available on record, I note that an aggregate amount of Rs. 63.03 lakhs have been collected by the Noticees as fee towards providing unregistered investment advisory services. I note that in the present matter, direction of refund of fee to the clients of Noticee no. 1 is one of the directions being issued to the Noticees. In this regard, I note that the SCN mentions that while the Noticees claimed to have refunded 284 clients out of the 1,426 clients, no documentary evidence of such refund such as bank statement showing refund of fee or any other evidence was provided to SEBI. I note that in their reply also, Noticee nos. 1 and 2 have submitted

that refund of fee has been made to nearly 700 clients and have provided a list of such clients to whom they have claimed to have made the refund. However, Noticee nos. 1 and 2 have failed to provide any evidence in support of their claim. Further, the Noticees at one place in their replies have submitted that they have refunded the fee to their clients while at another place they have submitted that they have refunded the fee after deducting expenses and in other places they have submitted that they have refunded 50% of the fee. In view of the above, the claim of the Noticees to have made the refund cannot be accepted at face value. However, the Noticees are at liberty to provide necessary proof in support of their claims regarding refund of fee to their clients, to the independent Chartered Accountant and the same may be considered by the independent Chartered Accountant while certifying the refunds made by the Noticees, as is being directed in para 20 below.

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 Noticees shall jointly and severally, within a period of three months from the date of this order, refund the money received from any clients/complainants/ investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;

   b. The Noticees 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 person such as names, addresses and contact details, within 15 days of coming into force of this direction;

   c. The repayments to the clients/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 Noticees 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 Noticees. Thereafter, remaining amount if any will be deposited in the Investor Protection and Education Fund maintained by SEBI;

f. The Noticees are restrained from selling their assets, properties and holding of mutual funds/shares/securities held by them 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 Noticees and depositing balance amount with SEBI, as directed in this order, from the bank accounts of the Noticees;

g. The Noticees are 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 Noticees 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 20(e) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees 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 Noticees, 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 31, 2023 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA