

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/57520	Date: July 11, 2023
Circular Ref. No: 168/2022	

To All NSE Members

Sub: SEBI Order in respect of Mr. Ashish Singh, Proprietor –M/s. Profit Gainer Financial Services.

SEBI vide its order no. QJA/AA/WRO/WRO/28036/2023-24 dated July 11, 2023 has debarred Mr. Ashish Singh-Proprietor of M/s. Profit Gainer Financial Services (PAN: GEGPS3913J) 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 two (2) years from the date of this order or till the expiry of two(2) years from the date of completion of refunds to complainants/ investors as directed in paragraph 31(a) above, whichever is later.

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 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:

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 respect of Mr. Ashish Singh, Proprietor –M/s. Profit Gainer
Financial Services.**

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTIONS 11(1), 11(4), 11(B)(1), 11(4A) AND 11(B)(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 3(1) OF THE SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013 AND UNDER SECTION 15-I OF THE SEBI ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

Name of Noticee	PAN
Mr. Ashish Singh - Proprietor of M/s. Profit Gainer Financial Services	GEGPS3913J

In the matter of Unregistered Investment Advisory Services

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI"), received a complaint against M/s Profit Gainer Financial Service (hereinafter referred to as **PGFS**) and its proprietor Mr. Ashish Singh (*hereinafter collectively referred to as "Noticee"*). SEBI conducted an examination into activities of the Noticee in order to ascertain the veracity of the complaint and to determine whether there has been any violation of the provisions of Securities and Exchange Board of India, 1992 ("SEBI Act, 1992"), the Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 ("IA Regulations") and any other Rules or Regulations made thereunder, by the Noticee.
2. Based on the examination of the aforesaid complaint, the Customer Application Form (CAF) of the Noticee obtained from the bank where the Noticee held account and the website of the Noticee, it was, *prima facie*, found that the Noticee has been providing investment advisory services without obtaining a certificate of registration

from SEBI thereby violating Section 12 (1) of the SEBI Act, 1992 read with Regulation 3 (1) of the IA Regulations, 2013.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice dated 17.04.2023 (hereinafter referred to as “SCN”) was issued to the Noticee calling upon it to show cause as to why suitable directions under Sections 11(4) and 11B (1) of the SEBI Act, 1992 including direction of refund of fees /monies collected from the investors should not be issued against the Noticee for the alleged violations. The Noticee was also called upon to show cause as to why inquiry should not be held against it in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon Noticee under Section 11(4A), 11B(2) read with Section 15HB and Section 15EB of the SEBI Act, 1992 for the alleged violations. The following documents were enclosed as annexures to the SCN:

Table A

Annexures to SCN	
Annex. No.	Particulars
A	Copy of the complaint dated 09.05.2021.
B	Relevant pages of the website which were downloaded.
C	Copy of Customer Application Form and account statement received from ICICI Bank.

4. The SCN has *inter alia* alleged the following:-

(a) SEBI received a complaint dated 09.05.2021 from Mr. Shashank Sachin Phansikar (hereinafter referred to as “**Complainant**”) inter-alia alleging a representative from PGFS had called upon the complainant informing that they deal in the stock markets and assured the complainant of generating profits in his demat account if he pays Rs.10,000/- and give access to his demat account. The representative also offered an option of ‘stock market tips’ through SMSes. The Noticee, thereafter, executed numerous bad trades in his demat account and incurred losses to the extent of Rs.12,000/-. When complainant contacted the Noticee for refund, complainant was only told to ‘add more funds to recover the losses’. The Noticee was running a business of “stock market tips” without SEBI registration.

(b) On receipt of complaint, SEBI undertook further examination into the activities of the Noticee which, inter alia, revealed that the Noticee was running a website with a domain name <http://www.pgfs.in>.

(c) The webpages which were downloaded when the website was active indicates that the Noticee was offering various investment advisory services to its clients upon payment of fees. The Noticee had, inter alia, advertised the following on its website:

“Do you need an adviser?”

“Profit gainer financial services was founded in 2020 and since that time has grown into the largest firm in the area. We are an assertive firm providing our clients a full range of services. Our offices are located in Raipur because this is where we chose to live”.

“Our team consists of more than 20 qualified and experienced Advisers, marketers, and managers”

“All results that you get from us are 80% guaranteed to bring you to a whole new level of profitability and financial success.”

“Our acquaintance with a client always begins with a Free Trial to find out possible solutions to their problems.”

(d) Further, the website claimed to provide nineteen types of investment advisory services packages in various segments like Stock Cash Basic, Stock Cash Premium, Stock Futures Basic, Stock Future Premium, Stock Option Basic, Stock Option Premium, Index Option basic, Index Option Premium, Stock Cash Platinum Service, Stock Option Platinum Service, Stock Future Platinum Service, Stock Cash HNI Service, Stock Future HNI Service, Stock Option HNI Service, PCP Service for Equity and Commodity, MCX BME Service, MCX BME Premium, MCX BME Platinum and MCX BME HNI Service.

(e) The following investment advisory services were observed to be offered on its website:

“Profit Gainer Financial Services is a leading stock market advisory company in India specialized in offering effect stock trading recommendation to the stock cash investors and traders trading in NSE and BSE in India.”

“Profit Gainer Financial Service gives approximately 30 to 40 calls in options (call and put) each month in their premium options Recommendation service.”

“Profit Gainer Financial Service is a pioneering financial advisory firm specialized in offering unique, reliable and effective options (Call and Put) Recommendation Service for option traders.”

“Trade successfully in the Indian Stock Market with PGFS’s reliable and effective stock trading Recommendation given by their specialized market analysts and reap.”

“Profit Gainers Financial Service is a pioneering stock market advisory company in India offering their bullion metal and energy investors and traders that trade in valuable metals.”

Profit Gainers Financial Service gives about 20 to 30 calls in MCX such as precious metals, base metals and energy every month in its premium bullion service. All premium bullion service calls will have just one target with right stop loss.”

(f) The Noticee was also found to be offering these packages on the website for different durations i.e. monthly, quarterly, half yearly and yearly and the fee for these packages ranged from Rs.8,500 for monthly packages to Rs.12,00,000 for yearly subscription.

(g) The Complainant had also provided details of payment made to one Mr. Ashish Baghel. From the details provided by the Complainant, it was observed that the payments were made by Complainant to UPI ID i.e baghelashish56@okicici which is the bank account (i.e. ICICI Bank Account No. 059XXXXXXX64) which

belonged to the Noticee viz Mr. Ashish Singh. Accordingly, the account statement, Account Opening Form (AOF) and Know Your Customer (KYC) details of Mr. Ashish Singh were sought from the ICICI Bank and were examined.

(h) From the details submitted by ICICI Bank to SEBI w.r.t Account No. 059XXXXXXX64 it is observed that the said bank account belonged to Mr. Ashish Singh, s/o Mr. Amar Singh and the account was opened on 20.03.2017. There were a total of 274 credits with a total credit amount of Rs.9,64,144.91 during the period of examination.

(i) Further, the Complainant has also transferred the money in three tranches to the above bank account of the Noticee.

(j) On an examination of the bank statement of the Noticee it is noted that keywords viz 'Service Charge', 'For trading', 'Pay Profit Gain', 'Trade', 'Bet', 'Registration', 'Services', 'Fee' and 'Service Payment', etc. has been observed among the narrations of the bank statement, which prima-facie indicates that the monies were received as consideration in lieu of investment advisory service / stock market trade / annual plan provided by the Noticee.

5. The SCN dated 17.04.2023 was sent by Speed Post with Acknowledgment Due to the available 2 addresses of the Noticee i.e both the Raipur address of PGFS and Rewa, Madhya Pradesh address of Mr.Ashish Singh. While the SCN sent to the Raipur address has been returned undelivered, the SCN which was sent to the Rewa, Madhya Pradesh address of the Noticee (i.e same address as per Aadhar card which is the identity proof provided by noticee to the bank at the time of account opening) has been delivered to the Noticee on 26.04.2023 from the available records as per consignment tracking details available on India Post. However, it is noted that the Noticee has not filed any reply to the SCN.

6. Therefore, in order to comply with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee on 20.06.2023. The hearing notice

was communicated vide emails dated 07.06.2023 and 19.06.2023 to the available email ID (as available on the website of PGFS i.e. info@demolink.org). The emails have not bounced back. Further, the hearing notice was also sent vide Speed Post with AD to the available 2 addresses of the Noticee i.e at Raipur address of PGFS and Rewa, Madhya Pradesh address of Mr.Ashish Singh. While the hearing notice sent to Raipur has returned undelivered, the hearing notice sent to Rewa, Madhya Pradesh was delivered on 16.06.2023 as per the consignment tracking on India Post. Accordingly, the SCN and hearing notice have been delivered to the address mentioned in the aadhar card of the Noticee.

7. However, on the scheduled date i.e. 20.06.2023, the Noticee viz Mr. Ashish Singh did not appear either in person nor online i.e via the video conferencing link sent to him.
8. From the above, I note that despite proper service of SCN and hearing notice, the Noticee has not responded. It is also seen that the Noticee has not responded during the examination when he was asked to submit his reply to certain information that was sought from him. Therefore, it is presumed that Noticee has nothing to submit in respect of the allegations levelled in the SCN. In this context, I find it apt to refer to and rely on the observation of the Hon'ble Securities Appellate Tribunal ("SAT") in the case of **Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013-Order dated February 11, 2014)**, wherein the Hon'ble SAT has observed "*.....appellants have neither filed reply to show cause notices issued to them nor have availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices...*" Under the circumstances, even though the Noticee has remained ex parte, I observe that the principles of natural justice have been adequately complied with in the present matter, and as the Noticee has preferred not to participate in the present proceedings before me, I am constrained to deal with the SCN on merits, based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have considered the allegations made in the SCN alongwith the findings of the examination by SEBI stated therein and the documents available on record. The Noticee has neither submitted reply to the SCN issued to him nor has he provided information sought from him during the examination. The letter issued to noticee during the examination, the SCN and the hearing notice have been sent to PGFS (Raipur address i.e as available on the website) and Mr. Ashish Singh (Rewa, Madhya Pradesh address i.e as per the Aadhar Card available with the Customer Application Form of the bank). While the letter, SCN and hearing notice sent to the address of PGFS have been returned undelivered, I note that all these have been delivered to Mr. Ashish Singh. Therefore, I am convinced that the service of SCN and hearing notice has been completed in accordance with principles of natural justice. I note that the issue for consideration is whether the Noticee has been providing investment advisory services without obtaining a certificate of registration from SEBI in violation of Section 12 (1) of the SEBI Act, 1992 read with Regulation 3 (1) of the IA Regulations, 2013.
10. The complaint (Annexure A to the SCN) received from the complainant, Mr. Shashank Phansikar, vide email dated 09.05.2021 and further submissions vide email dated 17.07.2021 received from the complainant has alleged that the employee of PGFS had advised him to purchase their “basic plan” and pay an amount of Rs.10,000/-. Based on the details provided by the complainant, SEBI was able to trace the bank account wherein the complainant transferred his money i.e the Noticee’s ICICI Bank A/c No. 059XXXXXXX64. The complainant has alleged that the employee of PGFS informed him that the company deals in stock market. He was asked to pay Rs.10,000/- to PGFS and share his demat account ID and password to generate profits in his account. Another option given to him by PGFS was sending “stock market tips” via SMS.
11. I note from the screenshots of payments given by the complainant as well as bank account of noticee that complainant had transferred a total amount of Rs.10,000/- in three tranches to the ICICI Bank A/c No. 059XXXXXXX64 of Mr. Ashish Singh (with UPI ID name as baghelashish56@okicici) which establishes that the fees was

paid by the complainant to the Noticee. The payments made by complainant to the ICICI Bank of the Noticee are as follows:-

Table No. : 1

Sr. No.	Date of payment by Complainant	Amount (Rs.)	UPI ID details of the payment
1	08-02-2021	3,000/-	UPI/103909918713/Registration/ phansikarshasha/HDFC
2	17-02-2021	4,000/-	UPI/104812362710/UPI/ phansikarshasha/ HDFC BANK LTD
3	22-02-2021	3,000/-	UPI/105313233263/UPI/ phansikarshasha/HDFC BANK LTD
TOTAL		10,000/-	

12. I also note from the exchange of whatsapp chats between the complainant and the employee of PGFS, that complainant has shared his demat account ID and password details and the employee has shared the website details and Google pay account details of the Noticee.

13. I also note from the webpages which are downloaded when the website was active (*website is currently not available*) that the Noticee was offering various investment advisory services to its clients upon payment of fees. The Noticee had, *inter alia*, advertised the following on their website which was also brought out in the SCN: -

“Do you need an adviser?”

“Profit gainer financial services was founded in 2020 and since that time has grown into the largest firm in the area. We are an assertive firm providing our clients a full range of services. Our offices are located in Raipur because this is where we chose to live.”

“Our team consists of more than 20 qualified and experienced Advisers, marketers and managers”

“All results that you get from us are 80% guaranteed to bring you to a whole new level of profitability and financial success”.

“Our acquaintance with a client always begins with a Free Trial to find out possible solutions to their problems.

“Profit Gainer Financial Services is a leading stock market advisory company in India specialised in offering effective stock trading recommendation to the stock cash investors and traders trading in NSE and BSE in India.....”

“Profit Gainer financial service gives approximately 30 to 40 calls in options (call and put) each month in their premium options Recommendations service.....”

“Profit Gainer Financial Service is a pioneering financial advisory firm specialised in offering unique reliable and effective options (call and put) Recommendations service for option traders.....”

“Trade successfully in the Indian Stock Market with PGFS’s reliable and effective stock trading Recommendation given by their specialized market analysts and reap.”

“Profit Gainer Financial Service is a pioneering stock market advisory company in India offering their bullion metal and energy investors and traders that trade in valuable metals.”

“Profit Gainers Financial Service gives just about 20 to 30 calls in MCX such as precious metals, base metals and energy every month in its premium bullion service.....”

14. Further, it is also noted from the website that the Noticee was offering the services against payment of fees. The fees ranged from Rs.8,500/- for monthly packages to Rs.12,00,000 for yearly subscriptions. The website claims *“As the most qualified services provider, we offer an amazing variety of financial solutions designed to help you solve all bookkeeping issues, no matter big or small”* and has shown to offer the following nineteen services alongwith their duration and price which are reproduced here below:-

Table No. 2

Sr.No.	Name of the Service	Duration	Price
1	Stock Cash Basic	Monthly	8,500
		Quarterly	24,000
		Half yearly	45,000
		Yearly	90,000
2	Stock Cash Premium	Monthly	20,000
		Quarterly	50,000
		Half yearly	90,000
		Yearly	1,60,000
3	Stock Future Basic	Monthly	12,000
		Quarterly	35,000
		Half yearly	65,000
		Yearly	1,20,000
4	Stock Future Premium	Monthly	30,000
		Quarterly	85,000
		Half yearly	1,60,000
		Yearly	3,10,000
5	Stock Option Basic	Monthly	12,000
		Quarterly	35,000
		Half yearly	65,000
		Yearly	1,20,000
6	Stock Option Premium	Monthly	30,000
		Quarterly	85,000
		Half yearly	1,60,000
		Yearly	3,10,000
7	Index Option Basic	Monthly	8,500
		Quarterly	24,000
		Half yearly	45,000
		Yearly	90,000
8	Index Option Premium	Monthly	20,000
		Quarterly	50,000
		Half yearly	90,000
		Yearly	1,60,000
9	Stock Cash Platinum Service	Monthly	51,000
		Quarterly	1,50,000
		Half yearly	3,00,000
		Yearly	6,00,000
10	Stock Option Platinum Service	Monthly	51,000
		Quarterly	1,50,000
		Half yearly	3,00,000
		Yearly	6,00,000
11	Stock Future Platinum Service	Monthly	81,000
		Quarterly	2,30,000
		Half yearly	4,55,000

Sr.No.	Name of the Service	Duration	Price
		Yearly	9,00,000
12	MCX BME Service	Monthly	10,000
		Quarterly	28,000
		Half yearly	52,000
		Yearly	1,00,000
13	MCX BME Premium	Monthly	25,000
		Quarterly	70,000
		Half yearly	1,30,000
		Yearly	2,50,000
14	MCX BME Platinum	Monthly	1,20,000
		Quarterly	3,50,000
		Half yearly	6,50,000
		Yearly	12,00,000
15	Stock Cash HNI Service	To know more about our HNI services, get in touch with your relationship manager.	
16	Stock Future HNI Service		
17	Stock Option HNI Service		
18	PCP Service for Equity and Commodity		
19	MCX BME HNI Service		

15. I note from the Para 13 above, that on various occasions the Noticee has in no uncertain terms shown itself as an “advisor” providing “advice” to the clients. Noticee has claimed on its website, *inter alia*, that Noticee is a “pioneering financial advisory firm” “pioneering stock market advisory company in India”. Further, from the table at Para 14, it is clear that the Noticee was providing various kinds of services for consideration.

16. Further, I also observe that at the time of inviting the investors to invest in securities market as per the various types of investment advisory services rendered by it through the website <http://www.pgfs.in> the Noticee was also making tall claims to the public through the aforesaid website, *inter alia*, as “PGFS was founded in 2020 and since that time has grown into the largest firm in the area. We are assertive firm providing our clients a full range of services”, “Our team consists of more than 20 qualified and experienced Advisors.....”, “All results that you get from us are 80% guaranteed to bring you to a whole new level of profitability and financial success”. Such claims were supplemented with statements such as “5000+ customers served”, “3,00,000+ hours experience”, “Trusted Brand - 13+ years”.

It is observed from examination of the website of PGFS that the Noticee was making certain unsubstantiated claims about their exposure and understanding of the securities market as detailed above and were enticing gullible investors by claiming that all results that the investors would get from PGFS are 80% guaranteed.

17. I note from the bank statement of the Noticee in ICICI Bank that he has received a total sum of Rs.9,64,144.91. The Noticee had opened the above bank account on 20.03.2017 and the last credit transaction in the account is till 01.02.2022. During the examination, the Noticee vide SEBI's letter dated 18.08.2021 was asked to submit the information relating to the alleged unregistered investment advisory activities offered by him, *inter alia*, details viz client names, amount collected as fees, details of bank in which the amount was collected, date of collection. Further, the Noticee was informed of the details of the bank account, total credits and total amount credited to the account vide SCN dated 17.04.2023.

I note that the Noticee has neither refuted the alleged charges levelled nor has he provided a defense. Hence, the entire amount of Rs.9,64,144.91 is being considered as amount received by Noticee for the unregistered investment advisory activities.

18. W.r.t the issue whether the Noticee has acted as an unregistered investment adviser in violation of the provisions of the SEBI Act, 1992 and the IA Regulations, the definition of "Investment Adviser" as given under Regulation 2(1)(m) of the IA Regulations is relevant:-

"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;"

19. Further, Regulation 2(1)(l) of the IA Regulations defines "investment advice" as under:

“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:....”

20. For ease of reference, the provisions of the SEBI Act, 1992 and IA Regulations alleged to have been violated by the Noticee are also reproduced hereunder :-

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 ⁵³[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.”

21. From a collective reading of (a) complaint of the Complainant (b) the webpages of the PGFS and (c) the bank transaction statement, I find that the Noticee was providing investment advice through the website, and also received consideration in lieu of the same and hence Noticee is covered under the definition of “investment adviser” and the money received from individuals was in the nature of fees in lieu of investment advice provided by it. The definition of “investment adviser” under Regulation 2(1)(m) of the IA Regulations states 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 those entities which are holding themselves out as investment advisers, such entity will be covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations. Therefore, I find that the Noticee i.e. Mr. Ashish

Singh, Proprietor of Profit Gainer Financial Service, was engaged in the business of providing investment advice to its clients, for consideration, and thus, is acting as an investment adviser, as defined under Regulation 2(1) (m) of the IA Regulations.

22. I note that in terms of Section 12 (1) of the SEBI Act and Regulation 3 (1) of the IA Regulations, no investment adviser shall act as an investment adviser or hold itself out as an investment adviser unless it has obtained a certificate of registration from SEBI.

23. 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:

- (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 along with 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 recognized 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.

24. I note that the safeguards provided under IA Regulations, 2013 requires continued minimum professional qualification and net-worth requirement for investment adviser, including disclosure of all conflict of interest, prohibition on entering into transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client based on client's objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc. These requirements are aimed at protection of investor interest.

25. I note that the activities of the Noticee i.e. Mr. Ashish Singh, Proprietor of Profit Gainer Financial Services, show that he was acting as an investment adviser. However, neither PGFS nor its proprietor were registered with SEBI in the capacity of Investment Adviser. I find that these activities were being carried out by the Noticee without obtaining the necessary certificate of registration as an investment adviser and therefore, the Noticee has violated Section 12(1) of the SEBI Act along with Regulation 3 of the IA Regulations.

Further, it is also seen that the complainant has alleged that he had shared his demat account details and password with employee of PGFS to handle his demat account due to which he has incurred losses. However, the examination has not revealed further information about the same.

26. As mentioned in the preceding para 17, during the examination process, SEBI sought information from the Noticee vide its letter dated 18.08.2021. While the letter sent to the PGFS at its Raipur address (which is available on the website) has been returned undelivered, the letter which was sent to the Rewa, Madhya Pradesh address of the Noticee (i.e same address as per Aadhar card provided by noticee to the bank at the time of account opening) has been delivered through Registered Post with Acknowledgment Due as per the consignment tracking details available on India Post. Vide said letter, Noticee was asked to submit the information relating to the alleged unregistered investment advisory activities offered by him, *inter alia*, details viz client names, amount collected as fees, details of bank in which the amount was collected, date of collection. I find that the Noticee has neither cooperated during the examination period nor has he replied / made submissions in the present proceedings. The Noticee has not provided the information sought from him with respect to the amounts collected from clients in connection with his unregistered investment advisory activities, in spite of the same being sought from him.

27. The SCN referred above also called upon the Noticee to explain as to why appropriate penalty be not imposed upon him under Section 15EB and 15HB of the SEBI Act, 1992 for the alleged violations. In this regard, before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions for necessary reference. The relevant extract of Section 15EB of the SEBI Act, 1992, is reproduced, hereunder:

“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.”*

“Penalty for contravention where no separate penalty has been provided.

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

28. I note that the allegation that the Noticee has acted as an investment adviser without obtaining a certificate of registration from SEBI has been clearly established in the preceding paragraphs and therefore, the Noticee has violated Regulation 3(1) of the IA Regulations read with Section 12 of the SEBI Act. In view of the same, I find that the penalty under Section 15HB (for violations prior to March 08, 2019) and Section 15EB (for violations subsequent to March 08, 2019) of the SEBI Act, 1992 is clearly attracted.

29. For imposition of penalties under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

“Factors to be taken into account while adjudging quantum of penalty.

15J. *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

30. As discussed in the aforesaid paragraphs, I note that a total of ₹9,64,144.91/- has been received by the Noticee in the bank account for the investment advisory services provided by it. Thus, in the light of the findings in the preceding paragraphs, I am of the considered view that the Noticee is liable for refund of the aforementioned amount collected as an unregistered investment adviser in addition to monetary penalties which are attracted for the said violations under Sections 15HB and 15EB of the SEBI Act.

DIRECTIONS

31. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4) and 11B (1), 11B (2) read with of Section 19 of the SEBI Act, and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, do hereby pass the following directions:

- (a) The Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services shall, within a period of three (3) months from the date of coming into force of this direction, refund the money received from any complainant/ investor/ client, as fees or consideration or in any other form, in respect of its unregistered investment advisory activities;
- (b) The Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services, 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 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) The Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services, 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. 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, as directed in this order, from the bank accounts of the Noticee;

- (e) After completing the aforesaid repayments, the Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services, shall file a report of such completion with SEBI addressed to the “Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7, 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 the directions at Para 31 (a) and (b) above, duly certified by an independent Chartered Accountant and the direction at para 31 (d) above shall cease to operate upon filing of such report on completion of refunds to complainants/investors;
- (f) 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 ‘Investors Protection and Education Fund’ maintained by SEBI;
- (g) In case of failure of the Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services, to comply with the aforesaid directions in subparagraphs 31 (a) and (f), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover such amounts, from the Noticee, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;
- (h) The Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services, 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 two (2) years from the date of this order or till the expiry of two (2) years from the date of completion of refunds to complainants/ investors as directed in paragraph 31 (a) above, whichever is later;

- (i) The Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services, is hereby imposed with a penalty of Rs. 1,00,000/- (Rupees One lakh only) under Section 15EB of the SEBI Act, 1992 and Rs.1,00,000/- (Rupees One Lakh only) under Section 15HB of the SEBI Act, 1992 and further directed to pay the penalty within a period of forty-five (45) days, from the date of receipt of this order;
- (j) The Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services, shall remit / pay the said amounts of penalty through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in. The details/ confirmation of e-payment should be sent to “The Division Chief, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051” and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

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

(k) The Noticee, Mr. Ashish Singh, Proprietor of M/s. Profit Gainer Financial Services, shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 31 (h) 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.

32. The direction for refund, as given in paragraph 31(a) above, does not preclude the clients/investors 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.

33. This order shall come into force with immediate effect.

34. 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.

Date: July 11, 2023

Place: Mumbai

DR. ANITHA ANOOP
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA