

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/ 59080	Date: October 25, 2023
Circular Ref. No: 224/2023	

To All NSE Members

Sub: SEBI Order in the matter of unregistered investment advisory activities by Shivaay Investments

This is with reference to SEBI Order No. QJA/KS/WRO/WRO/29694/2023-24 dated October 25, 2023 wherein SEBI has restrained following entities 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 years from the date of this order or till the date of filing of report, as directed in para 52.8 of the SEBI Order, whichever is later.

Sr No	Name of Entity	PAN
1	Shivaay Investment Proprietor Jaydeepgiri Goswami	BSKPG9592A
2	Rupeben Bhatt	BVBPB4487K
3	Kelvinbhai Bhatt	BKIPB0010L
4	Jayarajbhai Vala	AIZPV1760F

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 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 unregistered investment advisory activities by
Shivaay Investments**

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 read with Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In respect of:

Noticee No.	Name of the Noticee	PAN
1	Shivaay Investment Proprietor Jaydeepgiri Goswami	BSKPG9592A
2	Rupeben Bhatt	BVBPB4487K
3	Kelvinbhai Bhatt	BKIPB0010L
4	Jayarajbhai Vala	AIZPV1760F

In the matter of unregistered Investment Advisory activities by Shivaay Investment.

BACKGROUND:

1. Securities and Exchange Board of India (“SEBI”) had received a complaint dated June 05, 2021 from one Mr. Chirag Sadhu (“complainant”) against Shivaay Investment. (“Noticee 1”), alleging that it was providing Investment Advisory Services and offering guaranteed allotment under the Initial Public Offering (“IPO”) against the consideration for the services.

2. The Complainant, through his complaint referred above, has further alleged that he paid an amount of Rs. 77,000/- to Noticee No. 1 on December 16, 2020 in connection with the IPO of “Mrs. Bector Food Specialties Ltd.”, however, Noticee 1 failed to refund the money paid by the complainant and also blocked his contact number. The complainant has also provided the bank account details of Noticee 1, serviced by Axis bank wherein the aforementioned amount was paid by the complainant.
3. Pursuant to the receipt of the said complaint, SEBI conducted examination into the activities of Noticee 1 to ascertain whether there has been any violation of provisions of Securities and Exchange Board of India, 1992 (“**SEBI Act**”) and Regulations made thereunder.
4. During the course of the examination, SEBI found that following individuals are the owners/ co-owners of Shivaay Investment: -

S. No.	Name of Owner/ Co-owner	Ownership Type	DIN
1	Rupaben K Bhatt	Owner	09173570
2	Kevinbhai P Bhatt	Co-owner	09173569
3	Jayarajbhai H Vala	Co-owner	09173571

TRANSFER OF CASE FROM PREVIOUS AUTHORITY

5. Pursuant to an internal re allocation of cases, the present matter was assigned to me on June 22, 2023.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. On the basis of findings of the examination, SEBI issued a Show Cause Notice dated June 30, 2022 (“**SCN**”) to the Noticees which, *inter-alia*, stated as follows:

- 6.1. *Securities and Exchange Board of India (hereinafter referred to as "SEBI") had received a complaint against Shivaay Investment (hereinafter referred to as "Noticee no.1/ Shivaay") alleging that the Noticee no. 1 was advising and offering guaranteed allotment under the Initial Public Offering against the consideration for the services.*
- 6.2. *Complainant had inter-alia alleged that the Noticee no. 1 was offering assured guaranteed allotment in IPOs and for IPO of few companies, the Noticee no. 1 has paid the money back to the complainant along with returns. The complainant had further stated in his complaint that he had given INR 77,000/- to the Noticee no. 1 on December 16, 2020 in connection with IPO of 'Mrs. Bector Food Specialties Limited' and after that the Noticee no. 1 has failed to refund the money received/paid by the complainant and is also not responding to calls being made by the complainant. The complainant had also provided bank account details of the Noticee no. 1, held with Axis Bank wherein the above amount was paid by the Complainant to the Noticee no. 1. The complaint received in this regard is placed at Annexure 1.*
- 6.3. *Pursuant to the receipt of the complaint, an examination was undertaken about the activities of the Noticee no. 1 and the examination has revealed that a website with the domain name, www.shivaayinvestment.com was registered on January 02, 2021, in the name of 'Shivaay Investment' and was being operated by the Noticee no. 1.*
- 6.4. *The perusal of the contents of the website indicates that various services pertaining to securities market are being offered to public at large. The following details were inter alia disclosed on the said website:*

"SHIVAAY INVESTMENT is known for providing off market IPOs with confirmation, dealing in unlisted shares and their other services like our unique portfolio management system, low risk investment advisory, market research and technical analysis, and stable financial planning service, all the services are provided by us with real time accuracy and higher transparency to each and every investor.

We are also known for our unique portfolio management services and low risk investment advisory which can maximize the profit of the investor's valued capital with the minimum risk profile and our unique ideas and trading strategies helps our investors to earn higher profit. We believe in Investor's profit so we are following the line "Investor's satisfaction is our profit", which can motivate the firm that we are working so hard to achieve the Investor's satisfaction.

Off market IPO

We are offering deals in off market IPOs and current IPOs at attractive price with its confirmation

Unlisted Shares

We are providing unlisted shares deals, where investors can buy and sell unlisted shares under our experienced expert's guidance for maximizing their profit.

Portfolio Management

Under our experienced expert's guidance and supervision, we are helping investors to select the group of companies that can minimize the risk and maximize the profit on your valued investment for short term and long term.

Investment advisory

We are providing advisory services for equity, commodity, etc. segments which includes intraday, weekly and monthly expiry, future and options (F&O), short and long term investment ideas by our experts

Market Research & Analysis

Our expert team is evaluating the past and present performance of the shares and analyses the collective data to generate new investment strategies and ideas.

Financial Planning

We are estimating the total capital requirement for your expected return and suggest you invest your capital into particular selected scripts that can fulfil your demand of return with the minimum possible risk profile."

- 6.5. *Further, as per the said website, following persons are the owner/ co-owners of Shivaay Investment (Noticee 1): -*

Name of Owner/ Co-owner	Ownership Type
<i>Ms. Rupaben K Bhatt</i>	<i>Owner</i>
<i>Kevinbhai P Bhatt</i>	<i>Co-owner</i>
<i>Jayarajbhai H Vala</i>	<i>Co-owner</i>

- 6.6. *It has also been mentioned in the website that the Noticee no. 1 has 10+ years of experience and has 9,102 happy clients and it had won 6 awards (Copy of the contents of the website pages taken from www.shivaayinvestment.com are annexed hereto as Annexure 2).*

- 6.7. *From the details of the bank account of the Noticee no. 1 (Axis Bank account no. 920020042899667) and analysis of the statements (Copy of the statements are annexed hereto as Annexure-3) of the said bank account, the following factors have emerged:*

Name: Shivaay Investment

Prop/ Authorised signatory: Mr. Jaydeepgirj Goswami

Statement period: September 9, 2020 (date of account opening) to February 8, 2021

Amount of credit received during statement period: INR 1,92,38, 140/-

- 6.8. *The examination of the bank account reflected credit entries pertaining to the period during which the subscription for IPO of companies were also open. Copy of bank account statement is annexed as Annexure 3 and the analysis of bank account statements showing details of*

transactions IPO wise, along with narration details are annexed hereto and marked as Annexure 4.

- 6.9. *Mr. Jaydeepgiri Goswami (Prop. of Noticee no. 1), has vide his e-mails dated August 09, 2021 and August 17, 2021 contended that he was only working as a mediator and that Shivaay Investment was owned by Mrs. Rupaben K Bhatt (Noticee no.2), Mr. Kevinbhai Bhatt (Noticee no.3) and Mr. Jayarajbhai Vala (Noticee no.4). Further, Mr. Jaydeepgiri Goswami has also submitted list of clients to whom the advisory services were provided and respective amounts received from such clients, copy of which is annexed hereto and marked as Annexure 5. The examination of the above information reveals the details pertaining to the mode and manner in which amounts were received by the Noticee no. 1 from various clients and the same is mentioned in table below:*

Mode	No of transactions	Amount (INR.)
UPI	91	18,72,269/-
IMPS	63	33,17,248/-
NEFT	48	67,37,089/-
RTGS	11	39,76,580/-
Cash deposit	21	29,53,768/-
Total	234	1,88,56,954

- 6.10. *From the details mentioned on the website, information provided by Mr. Jaydeepgiri Goswami, bank account statements etc., it is prima facie observed that the Noticee no. 1 through Mr. Jaydeepgiri Goswami has held out itself as an investment adviser and Noticee no. 2, Noticee no. 3 and Noticee no. 4 have engaged in the activities of 'investment adviser' through Noticee no. 1 and have charged fee for such services."*

7. Based on the facts stated in the said SCN, it was alleged that the Noticees were engaged in the activities of providing investment advisory services without obtaining the requisite registration from SEBI, as required in terms of Section 12(1) of the SEBI Act, read with Regulation 3(1) of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("**IA Regulations**") and that the amounts credited in the bank account of Noticee No.1 were received as fees towards the services rendered as an investment advisor.
8. It was further alleged that by making declaration on its website assuring investors for guaranteed allotment in the IPOs of the companies, the Noticees have indulged into activities which are of misleading and deceptive in nature and have induced the investors to deal in securities. By such acts and omissions, the Noticees have allegedly committed a "fraud" as defined under Regulation 2 (1) (c) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ("PFUTP Regulations, 2003 ") and by such acts and omissions, the Noticees have allegedly violated Section 12(a) (b) & (c) of SEBI Act, 1992 read with Regulation 4 (1) and 4 (2) (k) of the PFUTP Regulations, 2003.
9. Accordingly, the SCN calls upon the Noticees to show cause as to why suitable directions under Sections 11(1), 11B(1) and 11(4) of the SEBI Act, 1992, including direction of refund of fees/ monies collected from the investors, should not be issued against them for the violations as alleged herein above. The Noticees were also called upon to show cause as to why inquiry should not be held against them in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon them under Section 11B(2) and 11(4A) read with Section 15HA and 15EB of the SEBI Act, 1992 for the violations alleged herein above.

10. As per information available on records, I note that the **SCN** was served on the Noticee No. 1 through email (sent to the email ID – jaydeepgoswami17@gmail.com), on Noticee No. 2 and 3 through newspaper publication and on Noticee 4 through speed post. Mr. Jaydeepgiri Goswami (proprietor, Shivaay Investment) had submitted his reply to SEBI through an email dated August 06, 2022.
11. The erstwhile Quasi-Judicial Authority had given two opportunities for personal hearing to all the Noticees, i.e., on March 01, 2023 and June 02, 2023. Hearing Notices (**HN1**) and (**HN2**), respectively, were issued to all the Noticees in this regard. However, the said hearings were adjourned by the erstwhile Quasi-Judicial Authority due to administrative reasons. In this regard, I also note that while attempting service of **HN2** on Noticee 2 and 3, the same returned undelivered back to SEBI. Accordingly, the PAN of the said Noticees were blocked and DMAT accounts were frozen by the concerned Market Intermediary, pursuant to which the Noticees 2 and 3, through a common email dated May 06, 2023 sent from the email ID rupakbhatt93@yahoo.com, replied to SEBI and promised full cooperation in the captioned matter. Through a subsequent email dated May 11, 2023, the Noticees 2 and 3 expressed their intension to refund monies to all the investors and requested SEBI to reactivate their PAN and unfreeze their DMAT accounts so that they could make bank transactions. The needful was done by the concerned market intermediary and Noticee 2 and 3, vide an email dated May 24, 2023, acknowledged receipt of **HN2** and provided their updated contact details and sought 8 weeks' time to refund monies back to the investors.
12. Pursuant to re-allocation of the matter to me, opportunity for personal hearing was granted to all the Noticees on July 14, 2023. From the available records I note that a common Hearing Notice dated July 05, 2023 (**HN3**), issued in this regard, was delivered to Noticee 1, 2 and 3 through emails and to Noticee 4

through registered post and also by email. I further note that **HN3** was also sent to Noticee 2 and Noticee 3 through speed post, at the addresses provided by said Noticees to SEBI through their e-mail dated May 24, 2023. However, the **HN3** returned undelivered with remarks "Addressee left without instructions". The scheduled hearing was attended only by Noticee 1.

13. In view of the delivery status of hearing notice to Noticees 2, 3 and 4, another opportunity for personal hearing was given to them on August 08, 2023. From the available records I note that the Hearing Notice dated July 24, 2023 (**HN4**), sent through registered post returned undelivered from the address of Noticee 2 and Noticee 3 with remarks "addressee left without instructions" and from the address of the Noticee 4 with remarks "refused". In this regard, reference is drawn to the order of Hon'ble SAT in the matter of Bhargav Ranchhodlal Panchal Vs. SEBI (Appeal No. 466 of 2021) dated February 2, 2023, wherein Hon'ble SAT has held that *"we find that when the order which is sent by post is refused then there is a deemed presumption of sufficient service upon the appellants. This presumption of service is, however, rebuttable."* I note that refusal to accept notice is considered deemed service.
14. I however note that the **HN4** was also served on Noticee 2, Noticee 3 and Noticee 4 through emails sent by SEBI to their respective email IDs, i.e., rupakbhatt93@yahoo.com, kevinpbhatt77@yahoo.com and kirtijayaraj4@yahoo.com. I note that Notices 2 and 3 were interacting with SEBI through their said email IDs. Further, no notifications with respect to failure of delivery of said emails were received.
15. On the day of the scheduled hearing, i.e. August 08, 2023, neither of the Noticees 2, 3 and 4 nor any of their representatives appeared before me for hearing. Further, the said Noticees did not seek any adjournment by way of any written/ oral communication.

16. I note that keeping the principle of natural justice in mind, sufficient opportunities for filing reply to the SCN and hearing have been given to all the four Noticees, however, except Noticee 1, remaining Noticees have failed to file any reply or appear before me for hearing.
17. In this regard, I rely upon the proposition of the Hon'ble Securities Appellate Tribunal ('SAT') in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) *inter alia* held that – “...*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*”.
18. The Hon'ble SAT also made such proposition in case of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. “.....*appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices*”.
19. Accordingly, the matter is proceeded *ex-parte* with respect to Notice 2, 3 and 4 on the basis of the documents and information available on record. Further, the submissions made by Mr. Jaydeepgiri Goswami, proprietor of “Shivaay Investment” (Noticee 1) are also taken into consideration.
20. Mr. Jaydeepgiri Goswami (proprietor, Shivaay Investment), vide an email dated August 06, 2022 had submitted his reply to the **SCN**. The relevant extract of the said reply is as follows: -

“.....I need to clarify that I am not advertising and offering guaranteed allotment of any shares, I was working on the instructions of Mr. Kevin Bhatt, Mrs. Rupa Bhatt, and Mr. Jayraj Vala, and whenever they give me a payment to return, on

the same day I paid all the money whom they told me to give. Also, I have answered every call from Mr. Chirag Sadhu. I have informed every step that I have taken against Mrs. Rupa Bhatt, Mr. Kevin Bhatt, and Mr. Jayraj Vala.

I also remind you that I am not operating any websites and I do not have access to the website that you have mentioned in point no 3. I also don't know 9102 happy clients and you have stated that I have 10+ years of experience in that I would like to tell you, sir, that I am 24 years old so how can I have 10+ years' experience and 9102 happy clients and 6 awards!

In this matter, I would like to inform you that Mrs. RUPABEN KEVIN BHATT, Mr. KEVIN PRAVINBHAI BHATT, and Mr. JAYRAJBHAI HARSURBHAI VALA three got together and cheated on me and many others on the name of SHIVAAY INVESTMENT BROKING LIMITED, for that I have given an application to my nearest 'UNA POLICE STATION' having register no. B.682/2021 on 25th September 2021. After that, I coordinated with the Police and on the 13th of May 2022, we have also given an application regarding the matter of chatting and fraud to the Respected Superintendent of Police (SP) & Asst. Superintendent of Police (ASP) of the district Gir Somnath at Veraval, Gujarat.

As you asked for information, I have some information about Mrs. Rupa Bhatt, Mr. Kevin Bhatt, and Mr. Jayraj Vala. The husband and wife duo Mr. and Mrs. Bhatt escaped from their house in Ahmedabad, Gujarat, and were not found at their residence. I have tried to contact them but their mobile phones were switched off, also I have visited all their residential addresses but all the doors are locked and they are not there.

Mr. Kevin Bhatt, Mrs. Rupa Bhatt, and Mr. Jayraj Vala are the registered brokers of Kunvarji Finstock I td, Mr. Jayraj Vala is the Vice President of the Chalala Nagarpalika (VP of Chalala Municipality) Dist, Amreli - 365630, they have registered a public limited company for this type of investment named SHIVAAY INVESTMENT BROKING LIMITED (CIN - U67100GJ2021PLC122563).

Contact Details:

(1) B/120, PULIN TENAMENT, PART 1, NR. KHODIAR MATS MANDIR, BH. SHALIN SCHOOL, NARODA, AHMEDABAD - 382325

(2) D/102 KESHAV GALAXY FALT, NEAR HARI DARSHAN CHOKDI, NAVA NARODA, AHMEDABAD CITY – 382330

(3) E/101, KAILASH ROYAL, NEAR DE-VARSHI SHINE, MUTHIYA VILLAGE, AHMEDABAD 382330 (LAST LIVING ADDRESS)

Mr. Kevin Bhatt's Mobile No

(1)0586500538
(2)9098074233
(3)7383660530
(4)7203943150
(5)9499528802. (LAST ACTIVE)

Mrs. Rupa Bhatt's Mobile No

(1)9586297700
(2)9510943849

Mr. Jayraj Vala's Mobile No)

(1)9426130047

Email id:

kevinpbhatt77@yahoo.in
KEVINPBHATT77@gmail.com
rupakbhatt93@yahoo.com

Bank Details:

NAME: RUPA BHATT
A/C NO: 50100317518106
IFSC: HDFC0009112
BRANCH: SINDHUBHAVAN AHMEDABAD

NAME: KEVIN PRAVINBHAI BHATT
A/C NO: 8812175596
IFSC: KKBK0002564
BRANCH PALDT, AHMEDABAD

NAME: JAYRAJBHAI VALA
A/C NO: 66019043284
IFSC: SBIN0060037
BRANCH: CHALALA

Also they are having bank accounts in ICICI Bank and IDFC FIRST Bank.

Lastly, I would like to inform you that after this matter I have been suffering from harassment, depression, death threats, and mental health issues for transferring money with the permission and willingness of both parties (buyer and seller). So this is my humble request to solve this problem."

21. Mr Jaydeepgiri Goswami (proprietor, Shivaay Investment) appeared before me for a hearing scheduled on July 14, 2023. Vide an email dated July 15, 2023, a

final reply has been submitted by him. The relevant extract of the said reply is as follows: -

“In my humble submission, I would like to submit that back in 2020, before the covid pandemic, I was freshly graduated as a mechanical engineer, but due to pandemic, there was a big recession in the especially mechanical engineering field, so I eagerly wanted a job so I forwarded my resume to all my friends and one of my friend suggested my resume to work for Mr. Kevin Bhatt who is running an investment firm named Shivaay Investment and he is also associated as a broker at Kunvarji Fin Stock at Makarba, Ahmedabad.

After that Kevin Bhatt contacted me and he assigned me a job at Shivaay Investment. In that I need to open a bank account, in that bank account Mr. Bhatt's investors will transfer money then I need to transfer all that money to Mr. Kevin Bhatt and he told me that you will get good commission equals to a salary. so I started working as a commission agent.

After that Mr. Kevin Bhatt introduced me to his wife Mrs. Rupa Bhatt who is also holding a director position in the company. I transferred all the money to Mrs. Rupa Bhatt's bank account on instructions of Mr. Kevin Bhatt, and after some time they both introduced me to Mr. Jayraj Vala who is a politician and vice president of Chalala Municipality in Amreli district. He is also holding a directorship in their company as well as a sub-broker of Kunvarji Fin Stock company at Chalala or Amreli.

After a few months, Kevin Bhatt didn't pay the money to their investors so everybody was asking me when the money will come back so I asked Kevin Bhatt and Rupa Bhatt but their phones were switched off. So I travelled to their all three residents in Ahmedabad to see them but they were not there, so after that, I asked Mr Jayraj Vala so he told me that they both stayed at Jayraj Vala's place and they left his place just a few days ago so again I visited Mr. and Mrs. Bhatt's residence at Ahmedabad the door was locked and they were escaped. So I registered a police complaint to Una Police Station along with all their company's investors.

As a result, Mr. Kevin Bhatt was caught by the Police on the 3rd of May 2023 and he promised the Police that he will pay the money to all his investors. He paid Rs. 77,000 to one of his investors Mr. Chirag Sadhu who is the main complainant in this matter on the date of 9th May 2023.

Mr. Kevin Bhatt told that he has funds in some overseas account but he is unable to transect because of some SEBI notice compliances, so, I have supported him in updating his KYC to all the brokers and also time by time he presented himself whenever the police called him.

On the date of 29th May 2023 he called me to his current resident village Savarkundla and made a notarized Consent Agreement with me. In that agreement they promised that they both will pay the money by two months. Until that time, they both requested that don't take any legal action because there are many of his investors belonging to a lower and lower middle-income group. So we all and the police gave him the time of two months.

After that meeting, Mr and Mrs. Bhatt went to the SEBI office in Ahmedabad to meet TV Balakrishnan Sir, after that I lost contact with him because his phone is switched off again.

During the hearing you asked me about the website. In that I would like to say that I didn't know the developer of the website but I transferred some amount to him on the instructions received by Mr. Bhatt at that time.

Lastly, I would like to submit that I don't have any idea about his work in the Shivaay Investment company, all I know is they are investing in the Share market, for me share market is a new thing, I don't have any kind of knowledge about Share market. In fact, I don't have any demat account. I joined his company because at that time I don't have any job.

In this matter I have cooperated with the SEBI and Police, I have given reply to each and every email by SEBI because I know that I didn't do anything wrong to anyone, from reference mails, I have already stated the difficulties and treats I have received during this time so this is my humble request to solve the matter as soon as possible."

CONSIDERATION OF ISSUES AND FINDINGS

22. I note that the main allegations against the Noticees are that the Noticees provided investment advisory services without obtaining certificate of registration from SEBI, thereby violating Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations and also promised guaranteed allotment in the IPOs of various companies thereby violating Section 12A (a), (b) & (c) of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(k) of the PFUTP Regulations, 2003. Therefore, I note that the following issues(s) arise for consideration in the present case: -

- A. Whether the Noticees acted as unregistered investment advisors in contravention of Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations?
- B. Whether the Noticees have committed “fraud” in contravention of Section 12A (a) (b) & (c) of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(k) of the PFUTP Regulations, 2003?
- C. If answers to issues A and B are in the affirmative, what directions to be issued and/or penalties to be levied against the Noticees?
23. Before proceeding further, it is pertinent to refer to the relevant provisions of the SEBI Act, IA Regulations and the PFUTP Regulations which are reproduced hereunder: -

SEBI Act

Registration of stock brokers, sub-brokers, share transfer agents, etc.

Section 12 (1):

"No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act."

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

Section 12A:

"No person shall directly or indirectly—

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

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

IA Regulations

Regulation 2(1)(g)

"consideration" means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;

Regulation 2(1)(l)

"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 Provided that investment advice given 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;

Regulation 2(1)(m)

"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;

Regulation 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:"

PFUTP Regulations, 2003

Regulation 2(1)(c)

"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact*
- (4) a promise made without any intention of performing it*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent*
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
- (8) a false statement made without reasonable ground for believing it to be true.*
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or any thing derived from it other than the market price.*

And "fraudulent" shall be construed accordingly;

Regulation 4(1)

Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. [Explanation– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose

securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

Regulation 4(2)

Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following: -

:
:
:

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

A. Whether the Noticees acted as unregistered investment advisors in contravention of Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations?

24. I note that Regulation 2 (1)(m) of the IA Regulations defines the term ‘investment adviser’. As per Regulation 2(1)(m) of the IA Regulations, investment adviser means any person, who is engaged in the business of providing investment advice to clients or other person or group of persons for consideration. Further, it includes any person who holds himself out as an ‘investment adviser’. Regulation 2(1)(m) of the IA Regulations refer to terms ‘consideration’ and ‘Investment advice’. As per Regulation 2(1)(g) of the IA Regulations, consideration means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice. As per Regulation 2(1)(l) of the IA Regulations, ‘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. However, advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public, shall not be an investment advice within the meaning of Regulation 2(1)(l) of the IA Regulations.

25. I note from the observations of SEBI that the website www.shivaayinvestment.com belongs to Noticee 1. I also note from records that the said website has been inactive. From the archived pages of the said website, downloaded from web.archive.org, it was observed that: -

25.1. The Noticee 1 claims to have been offering deals in the off market IPOs and current IPOs at attractive price with its confirmation.

25.2. The Noticee 1 claims to have been providing advisory services for equity and commodity segments which includes intraday, weekly and monthly expiry, future and options (F&O). It is specifically mentioned in the website that it is known for its unique portfolio management services and low risk investment advisory services which can maximize the profit of its investors with the minimum risk profile and its unique ideas and trading strategies helps its investors to earn higher profit.

25.3. The Noticee 1 claims to be having an expert team which evaluates the past and present performances of the shares and analyses the collective data.

25.4. The Noticee 1 claims to have more than ten years of experience, 9,102 happy clients and won 6 awards.

- 25.5. The website further mentions that Rupaben K Bhatt, Kevinbhai Bhatt and Jayrajbhai Vala are the owners/ co-owners of “Shivaay Investment”.
- 25.6. The address of none of the Noticees is mentioned on the said website.
26. From the contents of the website referred above, I note that the website projects the Noticee No.1 to be known for providing various services like off market IPOs with confirmation, low risk investment advisory, market research and technical analysis, unique portfolio management services, stable financial planning service etc. The website further claims that these services are provided with real time accuracy and higher transparency to each and every investor. From the above observations, it is clear that the nature of operations of the Noticee 1 includes providing stock market advisory services.
27. Apart from the website as referred to above, I also note from the submissions made by the complainant that the Current A/c No. 920020042899667, serviced by Axis bank, was held in the name of “Shivaay Investment”. I note that the Account Opening Form (AOF) and bank account statement provided by the Axis Bank, w.r.t. the aforesaid account, were analysed by SEBI and it has been recorded in the Examination Report that: -
- 27.1. Mr. Jaydeepgiri Goswami is the authorised signatory (proprietor) of the said bank account held in the name of “Shivaay Investment”.
- 27.2. The bank account was opened on September 09, 2020 and till February 08, 2021, a total credit of INR 1,92,38,140/- was received in the said account.

27.3. The transactions between the complainant and “Shivaay Investment” as traced from the statement of the aforementioned bank account (in the name of “Shivaay Investment”) are shown in the following table: -

TRANSACTION DATE	PARTICULARS	Debit (INR)	Cedit (INR)
15/10/2020	NEFT/MB/AXMB202899398720/SADHU CHIRAGCHEMCON RETU	31,802	0
26/10/2020	IMPS/P2A/030012085108/CHIRAGRA/ICICIBAN/TCSstock	0	30,780
09/11/2020	NEFT/MB/AXMB203149497066/SADHU CHIRAGMAZAGON RETU	39,443	0
04/12/2020	IMPS/P2A/033911874238/CHIRAGRA/ICICIBAN/IpoBkshi	0	62,350
17/12/2020	IMPS/P2A/035211306998/CHIRAGRA/ICICIBAN/Bectorsi	0	46,200
11/01/2021	NEFT/MB/AXMB210116065739/SADHU CHIRAGBURGERKING R	75,737	0
	Total	1,46,982	1,39,330

28. On perusal of the statements of the bank account (in the name of “Shivaay Investment”), I note that there were many credit entries received from various individuals. From the narrations of few of these transactions, like “Chemcon”, “Mazagon”, “Burger King”, “Mrs Bector” etc., I note that these were some of the IPOs that had hit market in the past. In this regard, from available records, I note the following transactions: -

28.1. Amounts received for IPO of Chemcon Speciality Chemicals Ltd.:

TRANSACTION DATE	PARTICULARS	Credit (INR)
22/09/2020	IMPS/P2A/026615827276/CHETANHA/ICICIBAN/Chemconi	1,04,720
22/09/2020	UPI/P2A/026615039382/GAURAV R/Kotak Mah/CHEMCON	14,960
23/09/2020	UPI/P2A/026710902249/JAYPRAKAS/Bank of I/Chemcom	30,260
23/09/2020	IMPS/P2A/026710938791/CHETANHA/ICICIBAN/Chemconi	74,800
23/09/2020	UPI/P2A/026711242104/MEET P GO/HDFC BANK/Chemcon	138
15/10/2020	NEFT/N289201276668184/RUPABEN BHATT/Chemcorn	9,67,000

28.2. Amounts received for IPO of Mazagon Dock Shipbuilders Ltd.:

TRANSACTION DATE	PARTICULARS	Credit (INR)
01/10/2020	UPI/P2A/027511517874/Mr SADHU /Central B/Mazagon	16,500
01/10/2020	UPI/P2A/027511525117/Mr SADHU /Central B/Mazagon	16,500
01/10/2020	UPI/P2A/027501420649/GAURAV RA/HDFC BANK/Mazagon	16,995
01/10/2020	UPI/P2A/027542023910/GAURAV RA/HDFC BANK/Mazagon	16,995
01/10/2020	UPI/P2A/027512368680/JAYPRAKAS/Bank of I/Mazagon	33,990

28.3. Amounts received for IPO of Burger King India Ltd.:

TRANSACTION DATE	PARTICULARS	Credit (INR)
02/12/2020	NEFT/N337201326373754/KALPESH SOLANKI/Burger King	528.0
03/12/2020	IMPS/P2A/033813772097/Chetnabe/AUSMALLF/Burgerki	31,175.0
03/12/2020	UPI/P2A/033817237881/Mr SADHU /Central B/Burger	15,588.0
03/12/2020	UPI/P2A/033817252897/Mr SADHU /Central B/Burger	15,588.0
03/12/2020	UPI/P2A/033890482857/RAJESH GO/HDFC BANK/Burger	12,000.0
04/12/2020	NEFT/N339201328546610/KALPESH SOLANKI/Burger King	21,5107.5
04/12/2020	UPI/P2A/033910936269/Mr SADHU /Central B/Burger	15,588.0
04/12/2020	IMPS/P2A/033915245206/GAURAVRA/KOTAKMAH/MBBUR GER	15,587.5

28.4. Amounts received for IPO of Mrs. Bectors Food Specialities Ltd.:

TRANSACTION DATE	PARTICULARS	Credit (INR)
16/12/2020	UPI/P2A/035119212898/Mr SADHU /Central B/Mrs bec	15,400
16/12/2020	UPI/P2A/035119232442/Mr SADHU /Central B/Mrs bec	15,400
16/12/2020	UPI/P2A/035173681745/CHANDRAVA/State Ban/Mrs bec	15,400
16/12/2020	UPI/P2A/035130306299/CHANDRAVA/State Ban/Mrs bec	15,400
16/12/2020	UPI/P2A/035122852288/SAGAR R T/HDFC BANK/Mrs Bec	92,400
16/12/2020	UPI/P2A/035123300308/JAYPRAKAS/Bank of I/MRSBECT	15,400
17/12/2020	NEFT/N352201343646355/TRUSHAR V SHYARA/Mr bector	3,04,734
17/12/2020	IMPS/P2A/035211306998/CHIRAGRA/ICICIBAN/Bectorsi	46,200
17/12/2020	NEFT/N352201343796331/HITESHKUMAR B MAKVANA/Becto	1,47,636
17/12/2020	NEFT/N352201343819938/HITESHKUMAR B MAKVANA/Becto	40,040

TRANSACTION DATE	PARTICULARS	Credit (INR)
17/12/2020	UPI/P2A/035212393631/JIGNESH D/Punjab Na/Mrs bec	15,400
17/12/2020	NEFT/N352201344186512/TRUSHAR V SHYARA/Bector	39,732

28.5. Amounts received for other IPOs:

TRANSACTION DATE	PARTICULARS	Credit (INR)
03/12/2020	IMPS/P2A/033812357943/ODIYA/HDFCBANK/lpo	25,000
04/12/2020	IMPS/P2A/033911874238/CHIRAGRA/ICICIBAN/lpoBkshi	62,350
16/12/2020	IMPS/P2A/035115283500/CHETANHA/ICICIBAN/BKiporet	45,000
16/12/2020	IMPS/P2A/035118361735/ODIYA/HDFCBANK/lpo	20,020
16/12/2020	UPI/P2A/035121470249/MITESH VA/State Ban/IPO	15,400
17/12/2020	RTGS/HDFCR52020121763663387/KALPESH SOLANKI///lpo	3,74,836
17/12/2020	IMPS/P2A/035214107271/KALPESHS/HDFCBANK/lpo	59,444
17/12/2020	IMPS/P2A/035215107955/KALPESHS/HDFCBANK/lpo	30,800

28.6. In addition to above, there were few transactions with remarks such as “Invest”, “Stock” and “Stocks”. Few examples are given below: -

TRANSACTION DATE	PARTICULARS	Credit (INR)
22/09/2020	UPI/P2A/026616748386/BRIJESH R/State Ban/Invest	20,060
26/10/2020	IMPS/P2A/030012085108/CHIRAGRA/ICICIBAN/TCSstock	30,780
03/12/2020	UPI/P2A/033816344262/ASMITABEN/Union Ban/Stocks	49,880

29. The above said transactions carrying narrations as stated above further stand to buttress the allegation that the nature of services rendered by the Noticee No.1 is nothing but investment advisory and that Noticee 1 was receiving amount in the said bank account towards providing various services including investment advisory services and allotment of shares in IPO which were advertised in the website www.shivaayinvestment.com.

30. The Account Opening Form (AOF) and KYC documents with respect to account no. 920020042899667 in the name of “Shivaay Investment”, were provided by

Axis Bank to SEBI. On perusal of the report on “Second level field verification” conducted by Axis Bank for the said bank account, I note that the Nature of Business has been recorded as investment related work.

31. I note that in response to SCN issued on June 30, 2022, Noticee 1, i.e., Mr. Jaydeepgiri Goswami, Proprietor “Shivaay Investment”, vide an email dated August 06, 2022, had *inter alia* submitted that he was working on the instructions of Noticee 2, Noticee 3 and Noticee 4 and was not operating any website as mentioned at para 3 of the **SCN**. Mr. Goswami further submitted that Noticees 2, 3 and 4 together had cheated him and many others in the name of “Shivaay Investment Broking Ltd.”, for which a complaint was filed by him at UNA Police Station on September 25, 2021 and an application was also submitted to the Superintendent of Police (SP) and Assistant Superintendent of Police (ASP) of the district Gir Somnath on May 13, 2022. Mr. Goswami also shared the contact details (including address, mobile number and email IDs) and bank account details of Noticees 2, 3 and 4.
32. In addition to above, I note that Mr. Jaydeepgiri Goswami, through an email dated July 15, 2023, has filed his final reply in the matter reiterating the submissions made by him through his earlier email dated August 06, 2022. Mr. Goswami further informed that his job was that of a commission agent and he used to transfer the funds credited by various investors in the bank account (in the name of “Shivaay Investment”) to the bank account of Noticee 2, on the instructions of Noticee 3. He also informed that Noticee 3 who was caught by Police on May 03, 2023, promised to repay the monies to all investors and had paid Rs 77,000 to one of the investors viz., Mr. Chirag Sadhu, who is also the complainant in the present matter. Mr. Goswami has also shared copy of Consent Agreement dated May 29, 2023 between him and Noticee 2 and Noticee 3. On perusal of the said agreement, I note that the Noticee 2 and 3 had consented to return an amount of INR 2,92,67,397.71 to all the investors

within two months and in case they fail to do so, Mr. Goswami, the consent taker may initiate appropriate legal action against them. However, from the reply of Mr Goswami, I note that the consentors could not be contacted. From available records, I note that the Noticees have not demonstrated repayment of monies to investors with any proof and / or certificate / audit report of a Chartered Accountant establishing return of monies. Thus, the replies are not acceptable.

33. Mr. Goswami has further submitted that he didn't know the developer of the website but admitted transferring some amounts to him on instructions of Noticee 3. He further contended that he had no idea about Share Markets or the nature of work of the company "Shivaay Investment". He joined the company as he didn't have any job and that he had cooperated with the SEBI and police authorities.
34. I note that in the instant matter, several innocent investors had transferred funds in the bank account number 920020042899667 which was opened in the name of company "Shivaay Investment" with Mr. Jaydeepgiri Goswami as the sole proprietor and the authorised signatory. From the above discussions, I gauge that the purpose of transferring funds by various investors was to make payment towards investment advisory services and to get allotment of shares in IPOs, as assured by Noticee 1 through the website www.shivaayinvestment.com. Considering this, the argument that Mr. Jaydeepgiri Goswami only acted on behalf of Noticee 2, 3 and 4, does not absolve him of the liabilities. Further, I note that the police complaint in the matter was filed only September 25, 2021, i.e., after 7 weeks of the first communication sent on August 3, 2021 from SEBI to Noticee 1 and therefore appears to be an afterthought to wash off his hands from the charges of violations levelled against him as the Proprietor of "Shivaay Investment".

35. I note from information available on record that total credit of Rs. 1,92,38,140/- was received in the bank account bearing number 92002004289967 in the name of “**Shivaay Investment**” from September 09, 2020 onwards. The **SCN** dated June 30, 2022, issued by SEBI, *inter-alia*, alleges that all the Noticees were engaged in the activities of an Investment Advisor and received advisory fee in the aforementioned bank account.

While Noticees 2, 3 and 4 have not submitted any reply to the SCN issued by SEBI, I note from the communication between Noticee 2 and 3 with SEBI, received through a common email dated May 11, 2023 (email ID-rupakbhatt93@yahoo.com), that they have expressed their intension to refund monies back to various investors which promise is nothing but an acceptance of unregistered advisory activity by the said Noticees. Also, as discussed elsewhere in this order, in pursuance to the consent agreement also, monies of investors were not refunded.

From the foregoing discussions, I note that Mr. Jaydeepgiri Goswami, proprietor of “Shivaay Investment” (Noticee 1) and Noticees 2, 3 & 4 were indulged in unregistered advisory activities and were receiving monies from general investors in the bank account in the name of “**Shivaay Investment**”.

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 the IA Regulations:

- 35.1. 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;

- 35.2. 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.

- 35.3. 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.
36. The IA Regulations provide for the minimum professional qualification and prescribe mandatory net-worth requirement. Further, it inter-alia provides for disclosures of any conflict of interest, risk profiling of clients, maintenance of records related to client assessments and the suitability of advice. The prescriptions in the IA Regulations are intended to safeguard the interest of investors and curb the perpetration of unregistered entities entering the field of investment advisory services and indulging in unscrupulous market practices.
37. However, in the present matter I note that the Noticees have acted in total disregard to the requirements of law without obtaining the required registration.
38. From the above discussions, I find that Noticee 1, along with Noticees 2, 3 and 4 were holding themselves out to be Investment advisers and were indulged in providing investment advisory services without obtaining mandatory registration from SEBI and for the said act(s), the said Noticees have violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations.

B. Whether the Noticees have committed “fraud” in contravention of Section 12A (a) (b) & (c) of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(k) of the PFUTP Regulations, 2003?

39. The SCN alleges that by making declaration on the website, www.shivaayinvestment.com, assuring investors of guaranteed allotment in the IPOs of various companies, the Noticees have indulged into activities which are of misleading and deceptive nature and have induced the investors to deal in

securities. By such acts and omissions, the Noticees have allegedly committed a “fraud” as defined under Regulation 2(1)(c) of PFUTP Regulations, 2003 and have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(k) of the PFUTP Regulations, 2003.

40. From the contents of the webpages of the website, www.shivaayinvestment.com, downloaded from web.archive.org, I note that “**Shivaay Investment**” was into providing investment advisory services for equity and commodity segments which includes futures and options (F&O). I however note that “Shivaay Investment” is not registered with SEBI in any capacity and this fact has not been mentioned in the said website. It appears that the unregistered status of “Shivaay Investment” with SEBI has been intentionally concealed from general investors as many of them may presume it to be registered with SEBI.
41. It is further claimed on the website that the entity was offering deals in off market IPOs and current IPOs at attractive price with its confirmation. For a general investor the said statement is in the nature of an assurance for allotment of shares, if services are availed of through “Shivaay Investment”. The website further mentions that the services provided by “Shivaay Investment” which include low risk investment advisory services, unique portfolio management services, stable financial planning services etc. are provided with real time accuracy. The website specifically emphasises that the unique Portfolio Management services and low risk investment advisory services provided by “Shivaay Investment” can maximise the profit of investors’ capital with the minimum risk profile and further claims that the unique ideas and trading strategies of “Shivaay Investment” helps its investors to earn higher profit. I however, do not find any data available on the website to confirm the validity of such statements. I, therefore, consider such statements as deceptive and misleading as such statements induces general investors to deal in securities.

42. The website further claims that “Shivaay Investment” has more than 10 years of experience, has 9,102 happy clients and has won 06 awards. I, however, do not find any information on the website like the date of inception/ incorporation of “Shivaay Investment”, or Reviews given by the happy clients or the details of the 6 awards. I further note that these statements have the effect of winning the confidence of investors and attract maximum number of clients. In this regard, I note that Mr. Jaydeepgiri Goswami, in his reply has stated that he was only 24 years old and could not have gained 10+ years of experience. In this regard, I note that the SCN alleges that the experience of “Shivaay Investment” to be of the age as mentioned above and not that of any individual more so of Mr. Goswami. Therefore, I find the reply to be irrelevant and is misconstrued.
43. From the contents of the website, I note that the Noticees have assured allotments in public issues, low risk investment advisory services, maximisation of profits, minimum risk, higher profits etc. I note that securities market investments are subject to market risks. The act of conveying maximisation of profits, minimum risks etc., is nothing but indulging for the purpose of luring customers in its net and thereby increasing its income. In light of the same, the act of the Noticees are non-genuine and deceptive and made with an intention to influence the clients to avail of their advisory services and deal in securities.
44. I note that Mr. Jaydeepgiri Goswami, through an earlier email dated August 06, 2022 had submitted that he was not aware of any website in the name and style of [www.shivaayinvestment](http://www.shivaayinvestment.com). In subsequent reply dated July 15, 2023, Mr. Goswami had submitted that he didn't know the developer of the said website, but he had transferred some amounts to him on the instructions received from Noticee 3. Both the statements made by Mr. Goswami are self-contradictory to each other as the former gives an impression that Mr. Jaydeepgiri Goswami was not aware of the website while the latter gives an impression that he was aware of the website.

45. It is pertinent to refer to the observations of the Hon'ble Supreme Court in the case of SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1, which are as under: -

“The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word “induce”.....to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient.”

46. Further, in the case of SEBI Vs. Kishore Ajmera (2016) 6 SCC 368, the Hon'ble Supreme Court observed that,

“the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/ Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to

the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light”.

47. In view of discussions in the forgoing paragraphs, I conclude that the information hoisted in the website www.shivaayinvestment.com was deceptive and misleading and are covered within the definition of “fraud” given under Regulation 2(1)(c) of the PFUTP Regulations and by such acts and/or omissions, the Noticees 1, 2, 3 and 4 have violated Section 12(a) (b) & (c) of SEBI Act, 1992 read with Regulation 4 (1) and 4 (2) (k) of the PFUTP Regulations, 2003.
48. In view of the totality of the matter, I conclude that the Noticees 1, 2, 3 and 4 acted as an investment advisor without obtaining mandatory registration from SEBI and for this act, the Noticees have violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations. I further conclude that the Noticee 1, through its website, disseminated information, which are deceptive and misleading in nature thereby inducing the investors to deal in securities and by such acts and omissions, the Noticees 1, 2, 3 and 4 have violated Section 12A (a), (b) & (c) of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(k) of the PFUTP Regulations, 2003.
49. I note that the SCN, *inter alia*, calls upon the Noticees to show cause as to why penalty be not imposed upon them under Section 15HA and 15EB of the SEBI Act, 1992.

Section 15 EB and 15HA of the SEBI Act are extracted 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 fraudulent and unfair trade practices.

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

50. I note that Section 15EB of the SEBI Act was inserted in the SEBI Act by the Finance Act, 2018 with effect from March 08, 2019. As noted above, the Noticee 1 had continuously been receiving investment advisory fees in its bank accounts from September 09, 2020 onwards. In view of the above, I find that the Noticees acted in violation of Section 12(1) of the SEBI Act read with Regulation 3(1) of the IA Regulations and Section 12A(c) of SEBI Act and Regulation 4(1) and 4(2)(k) of PFUTP Regulations. Thus, I find that the Noticees are liable to be imposed with penalty under both Sections 15EB and 15HA of the SEBI Act.

51. I note that Section 15J of the SEBI Act provide for factors which are required to be considered for adjudging quantum of penalty. Section 15J of the SEBI Act reads 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.”

DIRECTIONS

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

52.1. The Noticees 1 to 4 shall refund the advisory fee (called by whatever name) received in the bank account of Noticee 1 to clients of Noticee 1 in the manner as detailed hereinafter;

52.2. The Noticees 1 to 4 shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, about this Order and shall give details of modalities for refund, including the details of contact person such as name(s), address(es) and contact detail(s) of person(s) to be approached for refund, within 15 days from the date of receipt of this order;

52.3. The Noticees 1 to 4 shall accept refund claims/ requests for a period of 3 months from the date of public notice, as directed under para 52.2 above;

- 52.4. The Noticees 1 to 4 shall within a period of four months from the date of public notice, as directed under para 52.2 above, carry out and complete the refund exercise;
- 52.5. Upon expiry of four months from the date of public notice, any balance of such advisory fee that remains with the Noticees 1 to 4, due to their inability to contact the client or otherwise, as directed in para 52.2 above, shall be deposited in a dedicated escrow account, to be opened and maintained by the Noticees 1 to 4 for a period of one year and utilized only for the purpose of refund to the clients. Thereafter, the amount lying in the said escrow account shall be transferred to the Investors Protection and Education Fund maintained by SEBI;
- 52.6. The repayments to the claimants or clients shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channel, which ensures audit trail to identify the beneficiaries of repayments;
- 52.7. The Noticees No. 1 to 4 are hereby prohibited from selling assets, properties including mutual funds/ shares/ securities in demat and physical form except for the purpose of effecting refunds, as directed above. Further, the banks are directed to allow debit from the bank accounts of all the Noticees, only for the purpose of making refunds to the clients who were availing the investment advisory services from Noticee 1;
- 52.8. After completing the aforesaid repayments, the Noticees 1 to 4 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, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051",

within a period of 15 days, after expiry of four months from the date of public notice, as directed above, duly certified by an independent Chartered Accountant and the direction at para 52.7 above shall cease to operate upon filing of such report. In case of disbursal of any amount from the said escrow account, the Noticee 1 to 4 shall also file a report of such disbursal with SEBI, within a period of 15 days, after expiry of one year, as directed in para 52.5 above, duly certified by an independent Chartered Accountant;

52.9. The Noticees 1 to 4 are restrained from accessing the securities market, directly or indirectly and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two years from the date of this order or till the date of filing of report, as directed in para 52.8 above, whichever is later;

52.10. The Noticees 1 to 4 are also restrained from associating, as a director or key managerial personnel, with any listed public company or any public company which intends to raise money from the public or any intermediary registered with SEBI, for a period of two years from the date of this order;

52.11. The Noticees 1 to 4 shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 52.9 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;

52.12. The Noticees 1 to 4 (Jointly and Severally) are hereby imposed with penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 15EB of the SEBI Act and Rs.5,00,000/- (Rupees Five Lakh Only) under Section 15HA of the SEBI Act;

53. In case of failure of Noticees 1 to 4 to comply with any of the aforesaid directions mentioned in para 52, SEBI, on the expiry of the stipulated time period therein, may recover such amounts, from the Noticees 1 to 4, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.
54. The direction for refund, as given in Para 52 above, shall not preclude the clients/ investors to pursue 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.
55. This order shall come into force with immediate effect.
56. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar, Transfer Agents of Mutual Funds and BSE Administration and Supervision Ltd.

Date: October 25, 2023
Place: Mumbai

K SARAVANAN
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA