National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/60934	Date: February 29, 2024
Circular Ref. No: 287/2024	

To All NSE Members,

Sub: SEBI Order in the matter of unregistered investment advisory by NIFM Equity and Commodity Research.

This is with reference to in respect of SEBI Order No. QJA/GR/NRO/NRO/30057/2023-24 dated February 29, 2024, wherein SEBI has debarred 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 26 (e) of above SEBI order, whichever is later.

Noticee No.	Name of the Entity	PAN
1.	NIFM Equity and Commodity Research	AAIFN2471Q
2.	Ritesh Singh Pundir	AIOPP8443J
3.	Nilesh Singh	AJGPS1646B
4.	Arvind Kumar	BDOPK1936P

The order comes into force with immediate effect.

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

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

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

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 by NIFM Equity and Commodity Research.

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11(4), 11(4A), 11B (1) and 11B (2) of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Name of the Noticee	PAN/DIN
1.	**M/s NIFM Equity and Commodity Research**	**AAIFN2471Q**
2.	**Shri Ritesh Singh Pundir**	**AIOPP8443J**
3.	**Shri Nilesh Singh**	**AJGPS1646B**
4.	**Shri Arvind Kumar**	**BDOPK1936P**

The aforesaid entities are hereinafter individually referred to by their respective names/ noticee numbers and collectively as "the Noticees".

In the matter of Unregistered Investment Advisory by M/s NIFM Equity and Commodity Research

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BACKGROUND

1. Securities and Exchange Board of India **("**hereinafter referred to as **SEBI")** conducted an examination based on the receipt of a complaint against NIFM Equity and Commodity Research (hereinafter referred to as **"Noticee No.1"**). It was prima facie found that the Noticee No.1 was engaged in investment advisory activities without obtaining a certificate of registration from SEBI in violation of the provisions of Securities and Exchange Board of India, 1992 ("hereinafter referred to as **SEBI Act**") and Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 ("hereinafter referred to as **IA Regulations**") and any other Rules and Regulations made thereunder.

2. On examination, the following was observed and alleged:
    a. Notice No.1 (PAN: AAIFN2471Q) is a partnership firm, based out of New Delhi, having its address at Plot No.-4, Block C, Pankha Road, Janakpuri, New Delhi-110058, with a website namely www.nifmresearch.com.

    b. Further, upon perusal of Noticee's No.1's website, it was observed that it was using two bank accounts namely; ICICI Bank - A/c No.057105000701 and HDFC Bank - A/c No.07082560002660.

    c. It was also further observed from SEBI's database that Noticee No.1 is not registered with SEBI under any capacity, however, it has been offering services in the nature of Investment Advisory.

    d. Thereafter, upon perusal of the KYC details and Account statement of the aforesaid bank accounts of the Noticee No.1, it was observed that Noticee No. 2 - 4 were the partners in **M/s NIFM Equity and Commodity Research** (Noticee No.1). Further, it was also observed that Noticee No. 2 & 3, were having a common postal address i.e. F-3, New Adarsh Apartment, Dwarka, Plot-22, Sec.-10, New Delhi-110075 and a common e-mail id i.e. riteshpundir@yahoo.co.in.

    e. It was further observed that SEBI had sought for information from the Noticees vide letter dated 15.09.2021, however, no response was received from Noticee No.1, despite its letter being duly delivered and letters sent to Noticee Nos. 2- 4, had all returned undelivered. Subsequently, SEBI had sought for information from Noticee No. 1 vide e-mail dated 24.01.2022, which was responded by Noticee No.2.

    f. In this regard, it was observed that Noticee No.2, vide response dated 24.01.2022 has stated that Noticee No.1 has not obtain SEBI registration as it was not engaged in business of Investment Advisory actives since the inception of the IA Regulations. Further, vide the said reply, it was stated that the Noticee No.1 had two partners namely, Ritesh Singh Pundir

(Noticee No.2) and Arvind Kumar (Noticee No.3) and submitted their details viz. address, PAN, email and contact. It was also submitted that the website has been inoperative since long. Thereafter, with respect to details of bank accounts and payment gateways, it was submitted that Noticee No.1 had only one account in ICICI Bank and the same has been closed in December 2020. Lastly, it was submitted that Noticee No.1 had only provided education services, which was also subsequently closed.

g. Upon examination of the archived pages of Noticee No1's website, pursuant to the introduction of the IA Regulations, it was observed that the website was inoperative.

h. Therefore, based on the observations from the directory in the website and extracts of the archived pages, it was observed that the Noticee No.1 had held itself out as an Investment Advisory Company, giving Stock, Commodity and Currency Advisory since 2012 through its website, as it was producing and delivering tips and recommendations through Mobile SMS or Whatsapp, email, and Yahoo Messenger for Equity Tips, Futures and Options - NSE and BSE, Commodity Tips - MCX and NCDEX, Forex Tips, Comex Tips, BTST and STBT calls in BULLION and EQUITY market etc. It was also noted that by its own admission under the FAQ page, Noticee No.1 was purely a research company focusing on Technical Analysis & Fundamental Analysis that provides real time financial markets recommending (Trading Signals) to its customers for intra-day and short term trading on real time data. Thereafter, it was observed that free trial services in stock tips and commodity were also provided by Noticee No.1 along with different investment advisory packages for a fee. Further, no package relating to any educational activities as claimed by the Noticees were observed from the details of packages offered by the Noticee.

i. Under the Packages & Pricing tab details of the website there were various packages observed namely-"FOREX TIPS PACKAGE, EQUITY TIPS PACKAGE, F & O (Future & Options) TIPS PACKAGE, COMMODITY

(MCX) TIPS PACKAGE, AGRO COMMODITY (NCDEX) TIPS PACKAGE, COMBO (MCX & NCDEX) TIPS PACKAGE, COMBO (EQUITY + F&O;) TIPS PACKAGE, COMBO (EQUITY+COMMODITY) TIPS, COMBO (Equity+F&O;+Commodity+Currency), EQUITY TIPS (PREMIUM SERVICES), COMMODITY TIPS (PREMIUM SERVICES), FOREX TIPS (PREMIUM SERVICES) and F & O TIPS (PREMIUM SERVICES)" along with their description, monthly, quarterly, half-yearly and yearly pricing, mode of communication of advice and other features.

j. Upon perusal of the pricing of different investment advisory packages offered by Noticee No.1 it was noted that the pricing of different packages was in denomination of Rs. 2500, 4000, 5000, 6000, 7500, 8000, 10000, 12000, 15000, 16000, 18000, 20000, 24000, 25000, 30000, 40000, 45000, 50000 and 60000. Also, it was noted that the mode of payment of advisory package fee was by depositing the fee in the ICICI account as declared by the Noticee No.1.

k. Upon analysis of the account statement of the aforesaid ICICI bank account there were regular credit entries in the denominations as mentioned above between 10.05.2012 and 29.02.2020, however, the said account closed on 31.12.2020. It is also noted from the statement of aforesaid account that total amount of credit received by the Noticee No.1 post the IA Regulations coming into effect was Rs.25,20,474.26.

l. It was also observed that, the credit entries as mentioned above were mostly in cash with some having narrations viz. "NIFM EQUITY National, NIFMEQUITY-Ritesh and NIFMEquity". Also, a report of daily tips given by Noticee No.1 were available on the home page of the website along with free tips.

3. Based on the aforesaid facts, it was alleged in the Show Cause Notice (hereinafter referred to as "**the SCN**") dated August 11, 2022 and the

Supplementary Show Cause Notice (hereinafter referred to as "**the SSCN**") dated November 14, 2023, that the Noticees have violated the provision of Section 12(1) of the SEBI Act read with Regulation 3(1) of IA Regulations for engaging in Investment Advisory activities without obtaining the requisite registration from SEBI. Therefore, the SCN and the SSCN were issued, calling upon the Noticees to show cause as to why suitable directions including direction of refund of fees/monies collected from the investors should not be issued against the Noticees under Sections 11 (4) and 11 B (1), of the SEBI Act and why suitable directions for imposing penalty under Sections 11B(2) and 11(4A) read with Sections 15EB and 15HB of SEBI Act under SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, should not be issued against the Noticees for the aforesaid alleged violations.

4. The aforesaid SCN dated August 11, 2022 and SSCN dated November 14, 2023 were issued to the Noticees through SPAD, at their last known address and were duly delivered. Noticee No.2, vide e-mails dated 16.09.2022 and 21.09.2022, submitted a common reply to the SCN and submitted a common response to the SSCN vide its letter dated 27.11.2023, vide e-mail dated 28.11.2023.

5. Consequently, the Noticees were granted an opportunity of personal hearing before the undersigned on 09.02.2024, vide Hearing Notice dated 12.01.2024. The hearing notices sent vide SPAD were duly delivered to Noticee No. 1 & 3, while it returned undelivered for Noticee No. 2 & 4. Accordingly, the vide e-mail dated 02.02.2024, to Noticee No.2 on riteshpundir@gmail.com, the said hearing notices have been duly served on Noticee No. 2 & 4. On the day of the scheduled hearing, the AR, appeared on behalf of the Noticee and reiterated the submissions made vide the above mentioned responses and sought time till February 20, 2024, to make additional submissions, which was granted. Since the fact that the AR of the Noticees appeared for the hearing electronically and availed of the opportunity, the said personal hearing in the matter was concluded. However, instead of making additional submissions, vide e-mail dated February 20, 2024, the Noticees sought for one more opportunity of personal hearing in the

matter. In this regard, they were informed vide e-mail dated February 22, 2024 that the personal hearing in the matter stands completed as well as concluded and further, the time sought for making additional submissions in the matter had also ended. The summary of the Noticee's replies are as under;

- The Noticees submitted that the investment advisory services were started giving since May 2022, however, this practice was discontinued from February 2014. The same can be seen from the last transaction of advisory fee collected on 21.01.2014.
- The Noticees have submitted that they have always given prompt attention to SEBI's communications and have provided all the relevant details to the best of their abilities.
- They also submitted that they have complied with the laws of the land always particularly, SEBI Regulations to the best of their knowledge and belief. Further stated that it is a fact that even after stopping investment advisory activities services the website was not updated and pursuant to introduction of IA Regulations, in April 2014, the firm has done advisory activities only for a small period of time, i.e. 10 months, this was due to ignorance as they did not have any legal expert, thus there was never any malafide intention behind their actions.
- It was also submitted that they had only 8 instances of investment advisory service during the year 2013-14, for which they had received fees of only Rs. 47,000/- and they have never made any profit. However, the firm has not solicited any clients after January 2014 and carried only business in the line of education.
- The Noticees further submitted that they did not deliberately violate the provisions of IA Regulations and there was no loss caused to stakeholder at large as well as no loss to any statutory authority. Finally, they prayed for pardon as they have not acted against public interest.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

6. I have considered the material available on record including the complaint, the SCN, the reply, etc. and note that following issue arises for consideration: -

Whether the acts of the Noticees as imputed in the SCN, have resulted in the violation of the provisions of Section 12(1) of the SEBI Act and Regulation 3 (1) of the IA Regulations, while providing the services related to Investment Advisory without having proper registration?

7. Before proceeding further, it is pertinent to refer to the relevant provisions of the SEBI Act and the IA Regulations alleged to have been violated by the Noticees, as per the SCN. The relevant provisions of law are reproduced hereunder: -

SEBI Act

Section 12 (1) - Registration of stock brokers, sub-brokers, share transfer agents, etc.

" 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:"

IA Regulations

Regulation 2(1)(g) – Definition of Consideration

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

Regulation 2(1)(l) – Definition of Investment Advice

"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) – Definition of Investment Adviser

"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) – Requirement of Registration from SEBI to act as Investment Adviser

"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:"

8. I now proceed to consider the matter on merits.

9. It is noted that the Noticees in their written submission stated that they had started giving investment advisory service since May 2012, and the same was discontinued from February 2014, which can be seen from the last transaction of advisory fee collected on 21.01.2014. Thereafter, they also submitted that even after stopping investment advisory activities services, the website was not updated. Further, the Noticees have also accepted the fact that pursuant to introduction of IA Regulations, the firm was doing advisory activities only for a small period of time, i.e. 10 months, this was due to ignorance as they did not have any legal expert. Thus there was never any malafide intention behind their actions.

10. As regards, the contention of the Noticees that they were inter alia providing advisory activities only for a small period of time, i.e. 10 months, (till February 2014) owing to the lack of proper legal expertise, I note that they have themselves admitted to the fact that they were indulged in offering investment advice for consideration. As long as the person is engaged in providing investment advice to clients or other persons or group of persons without consideration or specifically covered within the exemptions provided under Regulation 4 of the IA Regulations, it will not be required to obtain registration from SEBI. However, the person cannot be engaged in the business of providing investment advice to clients or other persons etc., for consideration unless he has obtained a certificate

of registration from the Board under these regulations. In this regard, the Noticees have admitted to the fact that they were accepting fee for providing investment services and therefore they would be invariably covered within the ambit of Regulation 3 of IA Regulation and the 'Disclaimer clause' would not absolve their liability for providing investment advisory services without seeking registration from SEBI as required under law. Further, I note that the IA Regulations came into existence around April 21, 2013 and as admitted by the Noticees, it is a settled principle of law that ignorance of law is not an excuse and everyone is presumed to know the law of the land. A person cannot defend his illegal actions by stating that he was not aware that his actions were illegal. Thereafter, 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. 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.

11. Further, from the facts mentioned in the SCN, it is inter-alia noted that the Noticees have held themselves out as an Investment Advisory Company giving Stock, Commodity and Currency Advisory since 2012 through their website, they were also noted to have providing and delivering tips and recommendations through Mobile SMS or WhatsApp, email, and Yahoo Messenger for Equity Tips,

Futures and Options - NSE and BSE, Commodity Tips - MCX and NCDEX, Forex Tips, Comex Tips, BTST and STBT calls in BULLION and EQUITY market etc. It is also noted that the Noticees by their own admission stated that the Noticee No.1 is purely a research company focusing on Technical Analysis & Fundamental Analysis that provides real time financial markets recommendation (Trading Signals) to its customers for intra-day and short term trading on real time data. Further, the Noticees contended that free Trial services in stock tips and commodity are also provided by the Noticee No.1, along with offers on different investment advisory packages for fee. However, it is noted that no package relating to any educational activity as claimed by the Noticees is observed from the details of packages mentioned on its website.

12. Under the Packages & Pricing tab, the details of the website with various packages namely-“FOREX TIPS PACKAGE, EQUITY TIPS PACKAGE, F & O (Future & Options) TIPS PACKAGE, COMMODITY (MCX) TIPS PACKAGE, AGRO COMMODITY (NCDEX) TIPS PACKAGE, COMBO (MCX & NCDEX) TIPS PACKAGE, COMBO (EQUITY + F&O;) TIPS PACKAGE, COMBO (EQUITY+COMMODITY) TIPS, COMBO (Equity+F&O;+Commodity+Currency), EQUITY TIPS (PREMIUM SERVICES), COMMODITY TIPS (PREMIUM SERVICES), FOREX TIPS (PREMIUM SERVICES) and F & O TIPS (PREMIUM SERVICES)” along with their description, monthly, quarterly, half-yearly and yearly pricing, mode of communication of advice and other features was given.

13. Further, taking into consideration, the Noticees’ admission of the charges levelled against them, I find that they were engaged in the activities of an investment adviser, as per Section 12(1) of the SEBI Act without obtaining necessary registration from SEBI.

14. Thereafter, the Noticees also submitted that they only received Rs. 47,000/- for 8 instances on investment advisory service rendered during the year 2013-14 and had never made any profit. Additionally, they also submitted that the firm has not

solicited any clients after January 2014 and carried only business in the line of education, hence they did not deliberately violate the provisions of IA Regulations and caused no loss to stakeholder at large, no loss to any statutory authority and they have not acted against public interest and therefore, prayed to be pardoned off.

15. In this regard, I note that since the Noticees' admitted to the charges levelled against them, their intention behind carrying out as an investment advisor is irrelevant. Also, I note that, if an entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client in lieu of consideration, including entities which are holding themselves out as investment advisers, will be covered by the definition of 'Investment Adviser' as given in Regulation 2(1)(m) of the IA Regulations, 2013. I find that the Noticees were engaged in the business of providing investment advice to their clients, for consideration, and thus, acting as an investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013. I also note that the Noticees's argument that there was no loss caused to any stakeholder at large, no loss to any statutory authority and they have not acted against public interest, is without any merit because the penalty for noncompliance of IA Regulations, is not dependent on loss caused to any stakeholder at large, or on loss to any statutory authority or on acting against public interest. Further, I note that the Noticees have not made any submissions to prove that these funds were earned from other source of income, therefore I do not find any merit in the submission of the Noticees in this regard.

16. I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, 2013, the registration of the investment advisers is mandatory. It provides that, *"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”.

17. It is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct their activities in accordance with the provisions of the SEBI Act and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

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

18. 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:

    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 nonrefundable 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.

19. Further, the IA Regulations provides for the minimum professional qualification and prescribes 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.

20. It is noted that the Noticees were not registered with SEBI in the capacity of Investment Adviser during the period under examination. It is further noted that they received amounts to the tune of Rs.2520474.26 in their bank account post the introduction of IA Regulations.

21. In view of the above, I find that aforesaid total credit of Rs. 2520474.26 in the bank account of the Noticees was received by them as fee for investment advisory services provided by them while acting as an investment adviser

without obtaining certificate of registration from SEBI. In view of the above, I find that the Noticees by acting as investment adviser within the meaning of the IA Regulations, without obtaining certificate of registration from SEBI, they have acted in total disregard to the requirements of law and have violated Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act. Therefore, I find that the Noticees are liable to be imposed with penalty under both Sections 15EB and 15HB of the SEBI Act.

22. Thereafter, I note that the SCN has called upon the Noticees to show cause as to why appropriate penalty be not imposed upon them under Section 15EB and 15HB of SEBI Act for the violations alleged in the SCN. The provisions of Sections 15 EB and 15HB of the SEBI Act are reproduced hereunder: -

Section 15 EB - Penalty for default in case of investment adviser and research analyst

"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."

Section 15HB - Penalty for contravention where no separate penalty has been provided

"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."

23. 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."

24. The activities of the Noticees, as brought out above, seen in the backdrop of the aforesaid provisions show that they were providing the service investment adviser for a fee without holding the certificate of registration from SEBI. Therefore, I find that the Noticees have violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations.

25. As observed above, I note that the Noticees received total credit of amounts to the tune of Rs. 25, 20, 474. 26 in their bank account as advisory fees. These being the proceeds of an illegal activity, are liable to be refunded to the respective clients of the Noticees.

DIRECTIONS

26. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 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:

    (a) The Noticees shall refund all the money collected/received from any investors / complainants, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities immediately, and in any case, within a period of three months from the date of this order.

    (b) The Noticees shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in in one newspaper in vernacular language with wide circulation, detailing the 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;

(c) The repayments to the investors shall be effected only through bank transfers electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;

(d) The Noticees are prohibited from selling their assets, properties including mutual funds/shares/securities held by them 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 the Noticees, only for the purpose of making refunds to the clients who were availing the investment advisory services from the Noticees;

(e) After completing the aforesaid repayments, the Noticees 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 26 (a) above shall cease to operate upon filing of such report;

(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 had availed the investment advisory services from the Noticees. 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 Noticees to comply with the aforesaid directions in sub-paragraph (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 Noticees, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws,

(h) The Noticees are debarred 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 26 (e) above, whichever is later;

(i) The Noticees shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 26 (d) 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;

(j) The Noticees are hereby imposed with penalty of Rs.2,00,000/-(Rupees Two Lakh Only) under Section 15HB of the SEBI Act and Rs.2,00,000/- (Rupees two Lakh Only) under Section 15EB of the SEBI Act, both to be paid jointly and severally;

(k) The Noticees shall remit / pay the said amount of penalty, within a period of forty-five (45) days from the date of receipt of this order, 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 Noticees may contact the support at portalhelp@sebi.gov.in.

27. For any non-compliance of this order, the Noticees shall be subject to strict action under the applicable provisions of the law, including prosecution.

28. It is clarified that the direction for refund as given in Para 26 (a) above, does not preclude the complainant/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

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

30. A copy of this order shall be sent to the Noticees, all the recognized Stock Exchanges, the relevant Banks, Depositories and Registrar, Transfer Agents of Mutual Funds, BSE Administration and Supervision Ltd., to ensure that the directions given above are strictly complied with.

Date: February 29, 2024 **G RAMAR**

Place: Mumbai **CHIEF GENERAL MANAGER**

SECURITIES AND EXCHANGE BOARD OF INDIA