National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/61842	**Date: April 30, 2024**
Circular Ref. No: 318/2024	

To All NSE Members,

Sub: **SEBI Order in the matter of Unregistered Investment Advisory by Ms. Ideal Equity Proprietor- Anilkumar Talpada**

This is with reference to SEBI Order no. QJA/GR/WRO/WRO/30311/2024 dated April 30, 2024, wherein SEBI has debarred following entity 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 39 (e) of above SEBI order, whichever is later.

Sr. No.	Name of the Noticee	PAN
1	M/s Ideal Equity (Proprietor: Anilkkumar Talpada)	ARSPT66581G

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

National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in respect of Unregistered Investment Advisory by Ms. Ideal Equity Proprietor- Anilkumar Talpada

QJA/GR/WRO/WRO/30311/2024

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11(4), 11(4A), 11B, 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:

Name of the Noticee	**PAN**
M/s Ideal Equity (Proprietor: Anilkkumar Talpada)	**ARSPT66581G**

In the matter of Unregistered Investment Advisory Activities by M/s Ideal Equity (Proprietor: Anilkkumar Talpada)

BACKGROUND

1. Securities and Exchange Board of India **(“**hereinafter referred to as **SEBI”**) conducted an examination based on the receipt of a complaint against M/s. Ideal Equity (Proprietor: Anilkumar Rajivbhai Talpada) (hereinafter referred to as **“Noticee”**). It was prima facie found that the Noticee 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. SEBI was in receipt of complaint dated September 15, 2022 against the Noticee, inter alia, alleging that it had taken monies from the complainant

for providing tips relating to stock trading and offering different types of plans to the complainant.

b. Further, upon perusal of the complaint, the complainant clearly mentioned that he received the first call from "*Ideal Equity*" having mobile number "7041737937". Only after this, the complainant had spoken to Mr. Vipul with Mobile Number "6359794037" who claimed to be from the Noticee's company and subsequently started trading for which he received Rs.24000/-. Further the complainant also mentioned the website name called www.idealequity.co.in.

c. Accordingly, the aforesaid website of Noticee www.idealequity.co.in was perused and as it was inactive, the details regarding the website of the Noticee were taken from archive.org website.

d. The following was observed from the archived pages of the website.
   1) The Noticee claimed to provide Investment Advisory (**IA**) services through calls.
   2) The Noticee had claimed to provide services viz. Cash (Intraday), F&O and MCX and charged Rs.20000, Rs.30000, and Rs.40000, respectively, as fees for aforesaid services.
   3) The Noticee had also provided its bank account details i.e. (ICICI bank account number 026005002925), a Current Account with IFSC Code-ICIC0000260.
   4) The following 8 mobile numbers of Noticee were also reflected on the said website;
      i. 9512340132,
      ii. 7698816753,
      iii. 9099666220,
      iv. 9099666228,
      v. 9099666446,
      vi. 9099666447,

vii. 7567367280,

viii. 7698816753

e. **Observations from KYC & the Bank account statements**

i. Account opening form i.e. KYC and copies of account statement (for the period August 02, 2021 to February 02, 2023) for the bank account No. 026005002925, were obtained from ICICI Bank.

ii. From the aforesaid account opening form i.e. KYC, it was observed that the said account was opened in the name of Ideal Equity (Proprietor-Anilkumar R Talpada). Further, ICICI Bank has mentioned vide its email dated September 27, 2022, that the bank marked a lien of Rs.5,500/- on the said account and the bank account was also observed to be active.

iii. Further it was observed that one of the mobile number of Noticee, i.e. 9512340132 provided vide email dated March 08, 2023 by ICICI Bank is same as mentioned on the website of the Noticee idealequity.co.in.

iv. As per the copy of Shops and Establishments Registration Certificate, which was provided by ICICI Bank as KYC document, the nature of business of the Noticee was inter alia mentioned as Investment Consultancy and Broker-Stock Market.

v. From the aforesaid bank account statement, it was also observed that the narration of certain entries was mentioned as **'Advisory Fee'**, '**Advisory Charge'**, **'Market Advisory'** etc., It is further observed from the statement of bank account no. 26005002925 that the total amount credited /deposited in the said account from the date of account opening (i.e. August 02, 2021) to till February 02, 2023 was Rs.17,65,690.43. Since the said bank account number is mentioned on the website of the Noticee for collecting money for purpose of providing Unauthorized Investment Activities (herein after referred to **"UIA"**) and the Noticee is alleged to be engaged in UIA activities, therefore, all the amount credited in the aforesaid bank account from the date of bank account opening to till February 02, 2023 i.e. INR 17,65,690.43 is construed to be amount received for UIA activities. Therefore, total amount credited in the aforesaid ICICI bank account during the period August 02, 2021 to February 02, 2023 is alleged to be amount received by way of UIA activities.

3. On the basis of the aforesaid factual observations, the evidence gathered during the examination and considering the prima facie illegal nature of the activities undertaken, a Show Cause Notice dated January 16, 2024 (hereinafter referred to as "**SCN**") was issued against the Noticee. It was alleged in the SCN that the Noticee carried out investment advisory activities without obtaining necessary registration from SEBI and that the Noticee, by engaging in the acts of rendering investment advisory without having SEBI's registration, has violated the provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of IA Regulations, 2013. The SCN further called upon the Noticee to show cause as to why suitable directions including direction of refund of fees/monies collected from the investors under Sections 11B, 11 B (1) and 11 (4) of the SEBI Act and suitable directions for imposing penalty under Sections 11B (2) and 11(4A) read with Sections 15EB of SEBI Act and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, should not be issued against the Noticee for the aforesaid alleged violations.

4. I note from the records available before me that the SCN dated January 16, 2024 was duly served upon the Noticee through Speed Post, at the last known addresses and was duly delivered to the Noticee. In response, the Noticee vide letter dated February 06, 2024 had submitted a undated and unsigned written reply to the SCN and also the Noticee had submitted its undated written reply to the SCN which was received by SEBI on February 14, 2024.

5. In conformity with the principles of natural justice, an opportunity of personal hearing was provided to the Noticee and its personal hearing was scheduled on April 16, 2024. I note that the hearing notice was sent vide SPAD/e-mail which was duly delivered on the Noticee. Accordingly, on the day of the scheduled hearing, the Noticee appeared through Webex and reiterated the aforesaid undated replies received by SEBI on February 06, 2024 and February 14, 2024. Thereafter, vide e-mail dated April 18, 2024, the Noticee sought for additional time to submit additional submission/documents in the matter, which was acceded to with advise to submit the same on or before April 24, 2024. Accordingly, the Noticee made its additional submission vide e-mail on the said date i.e. April 24, 2024. The summary of the Noticee's replies dated February 6 &14, 2024 and April 24, 2024 are as under;

- The Noticee stated that the website was created/started and the firm was also established for the purpose of applying for license. Accordingly, the Noticee draws a distinction between establishing a firm and conducting business. The Noticee also further stated that it had started the website but not started the business.
- The Noticee submitted that it had applied for registration as an investment advisor on 19.03.2021 but SEBI had not responded even after 10 months of application and reminder.
- The Noticee stated that as there was no response from SEBI even after long time of applying for license, it closed the firm and its website that was inactive because the website was deactivated by it.
- The Noticee then stated that while SEBI delayed its approval for registration, it was running Wheat and Online Coaching advisory and teaching classes and bags manufacturing.
- As regards the advisory fees mentioned on the website, the Noticee submitted that it had not started the IA business and therefore has not charged the fees mentioned on the website. In this regard the Noticee also submitted its bank account statement in support of its claim.

- As regards providing investment advisory service through calls, the Noticee submitted that it had not provided any services by calls and further it was stated that it does not know Mr. Vipul mentioned in the compliant and neither its name, bank account details nor its mobile phone number was mentioned in the complaint of Mr. Sankar Rao. It was also stated that the term advisory fees can mean many kind of things like in its case it means for the purpose of educational activity and coaching classes.
- Noticee stated that as mentioned by the complainant Sankar Rao vide email that an amount of Rs.35,000/- returned back to him, there is no pending complaint against the Noticee. Further, the Noticee stated that there was no malafide intention on its part as the breach was purely unintentional. Therefore, the Noticee further stated that no penal action is required as there is no violation of the provisions of law.
- The Noticee also stated that it was under a bonafide belief that it was not liable to comply with the relevant provisions of law since Rs.35,000/- was returned to the complainant.
- As regards the bank account details available on its website, the Noticee stated that opening a bank account does not mean it has started investment advisory business activity and it has used the said bank account for its other businesses i.e. Bag manufacturing and coaching classes.
- As regards the lien of Rs.5500/- marked by ICICI bank in the said bank account, the submitted that proprietor's brother's friend had used the Noticee's bank account for his business purpose and received Rs.5500/- , which the proprietor paid to him in cash. However, since the person with whom the proprietor's brother's friend had dealt with to receive the said money had raised a compliant with cyber-crime department of Police. Hence, the Noticee stated that if the complaint is of IA activity, the complainant should have filed the complaint with SEBI and not with the cyber-crime branch of police.
- As regards the 8 phone numbers available on the Noticee's website, it stated that all the said eight numbers were not registered in its name and it was not

aware of the persons whose name they were registered on as they were not related to it. The notice admitted that it has only one number i.e. 9714346286 and number 9512340132 was taken for website only and it is now not in operation.

- As regards the copy of shops and establishments registration certificate provided by ICICI bank which shows the nature of Noticee's business as investment consultancy and broker Stock market, the Noticee submitted that it was done for the purpose of applying for SEBI registration.
- The Noticee denies all the allegations and violations as it has not done any IA business. The complainant was wrong which he corrected later.

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

6. Considering the factual findings from the examination, the allegations levelled against the Noticee in the SCN based on such findings and the explanations offered by the Noticee through written and oral replies to the SCN, I find that the following issue requires consideration.

   Whether the acts of the Noticee 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 Noticee, as per the SCN. The relevant provisions of law are reproduced hereunder: -

<u>SEBI Act</u>

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

" 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. As stated in the beginning, SEBI had received a complaint dated September 15, 2022 inter alia alleging that the Noticee had taken monies from the complainant for providing tips relating to stock trading and offering different types of plans to the complainant. The complainant also mentioned that he received the first call from "Ideal Equity" having mobile number "7041737937". Only after this, the

complainant had spoken to Mr. Vipul with Mobile Number "6359794037" who claimed to be from the Noticee's company and subsequently started trading for which he received Rs.24000/-. Further the complainant also mentioned the website name called www.idealequity.co.in.

10. In this regard, it was observed from the archived pages of the website www.idealequity.co.in that the Noticee claimed to provide an investment advisory services through calls viz. Cash (Intraday), F&O and MCX and charged Rs.20000, Rs.30000, and Rs.40000, respectively, as fees for aforesaid services.

11. The Noticee had also provided its bank account details i.e. (ICICI bank account number 026005002925), a Current Account with IFSC Code-ICIC0000260 along with its 8 mobile numbers for contact.

12. Further, I also note that it was unearthed during the SEBI's examination that the complainant had transferred the money through Gpay and the amount was also returned/refunded to the complainant by the Noticee through Gpay on taking up the complaint against the Noticee by SEBI.

13. From the aforesaid facts, it is clearly ascertained that the advisory activities relating to securities market were allegedly provided through the website, www.idealequity.co.in to the clients/investors against monetary consideration. Further, such activities of providing advisory services relating to investing in, purchasing, selling or otherwise dealing in securities and various other investment products of securities, as was proclaimed by the said Noticee through its websites were being carried out in an unauthorized manner without having an appropriate SEBI registration.

14. At this juncture, it is pertinent to look at the definition of an IA as articulated in Regulation 2 (1) (m) of the IA Regulations, 2013 which states that Investment Adviser means "*any person, who for consideration, is engaged in the business of*

providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called". Further, I have also perused Regulation 2(1)(l) of the IA Regulations, 2013 which defines Investment Advice as "*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*."

15. In the light of the aforesaid definitions read with the contents published and proclaimed on the website of the Noticee as well as the allegations imputed in the SCN, I note that through the website of the Noticee, i.e. www.idealequity.co.in, it has been made sufficiently clear to the public at large that the oticee was engaged in offering investment advice as defined under Regulation 2(1)(l) of the IA Regulations, 2013 and through its said website, advices related to investing in, purchasing and selling of securities as well as various other service packages were being dispensed to the investors at large in lieu of monetary considerations, for dealing in securities, which were nothing but offering of investment advisory services to the public. Considering the aforesaid factual findings that led to the commencement of the instant proceedings, it leaves no doubt in my mind that the above noted activities of the Noticee squarely satisfy the conditions for coming to an unassailable conclusion that indeed the Noticee was engaged in providing investment advisory services for consideration to the investors of securities market.

16. At this juncture, it is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 provide various safeguards to ensure that the interest of the investors, who receive investment advice, are protected. One such safeguard provided under the said regulations is that any person carrying out investment advisory

activities has to first obtain a certificate of registration from SEBI as mandated under regulation 3(1) of the IA Regulations, 2013, which, inter alia, provides that, no person shall act as an investment adviser or hold itself out as an investment adviser, unless he has obtained a certificate of registration from SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further, safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on the Investment Advisor from entering into transactions in securities himself, which are contrary to the advice given to the clients at least for 15 days from the date of giving such advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

17. In order to ensure protection of investors' interest who desire to receive investment advice from various Investment Advisors, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and has to conduct its activities in accordance with the provisions of the relevant SEBI Regulations. However, the activities of the Noticee, as brought out from the various materials described above including its website, bank account, complaints, etc., seen in the backdrop of the aforesaid regulatory provisions, show that the Noticee was being held out as IA, although the Noticee was not registered with SEBI in the capacity of IA. Hence, I find that these activities/ representations as were being made through the Noticee without holding the mandatory certificate of registration as investment adviser by the Noticee is in blatant violation of Section 12(1) of SEBI Act, 1992 read with regulation 3(1) of the IA Regulations, 2013.

18. Now the issue which requires consideration is to examine the role of Noticee in the whole activities of unregistered advisory activities conducted under name of **“Ideal Equity”**, which is being dealt in subsequent paragraphs of this Order.

19. I note that the Noticee in its written submissions dated February 06, 2024 and February 14, 2024, stated that it had applied for SEBI registration on 19.03.2021 but SEBI had not responded even after 10 months of application. Further, as regards to the complaint of Mr. Sankar Rao, the Noticee submitted that neither its name, bank account details nor its mobile phone number was mentioned in the complaint of Mr. Sankar Rao. It was also stated that as it had returned Rs.35, 000/- to the complainant, therefore there was no complaint pending against it. In this regard, it was also submitted that the Noticee was under a *bona fide* belief that it was not liable to comply with the said provisions of SEBI Regulations as it has returned Rs.35,000/- to the complainant. Further, the Noticee stated that no penal action was required as there was no violation of the provisions of law. Finally, it was stated that there was no *mala fide* intention on the part of the Noticee as the breach was purely unintentional.

20. As regards the Noticee’s submission that it had returned Rs.35,000/- to the complainant and the fact that the same was confirmed by the complainant vide mail dated January 30, 2024 that he had received the money from the Noticee, I note that the said facts clearly establish that the refund was made pursuant to the issuance of the present SCN dated January 16, 2024. Further, the Noticee has also not submitted any transaction details to prove that the said refund was done prior to the issuance of the SCN. Hence, the act of refunding of money to the complainant appears to be an afterthought devised by Noticee. Further, as regard to the submission of Noticee that there were no details about its name, bank account number and mobile number of the Noticee in the aforesaid complaint, I note that the Noticee has failed to explain how the money was remitted to its bank account and the refund was made to the complainant by it without the above details with the complainant. Hence, I find no merit in the submission made by

the Noticee. Further, admittedly, despite registration not being granted on the application applied for registration as an investment adviser, it functioned as an investment adviser since August 02, 2021 to February 02, 2023 and collected an amount of Rs.17,65,690.43 for providing the investment advisory service. Therefore, the Noticee's argument that there was no *mala fide* intention on the part of the Noticee as the breach was purely unintentional, does not stand.

21. In this regard, I note that the Noticee has contended that all these transactions were conducted by it without having the knowledge of the regulatory provisions and also stated that the breach was unintentional. However, I find that the statement that Noticee was ignorant of the regulatory provisions is not justified. As postulated by legal maxim "*ignorantia juris non excusat*", ignorance of law is no 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 his actions were illegal, even if it honestly believed that they were not breaking the law. Therefore, I do not find any merit in this contention of Noticee. It is a cardinal rule of law that ignorance of law cannot be an excuse for the violation of any statutory provision and therefore I am not inclined to give any consideration to the said submissions of the Noticee in its favour.

22. With regards to the charges of providing investment advisory through calls by the Noticee, the Noticee disagreed and denied that it provides any services by call. It further submitted that on the basis of words like advisory fees, SEBI can't claim that it is doing advisory service and the advisory could be of many kind of things and in this case the advisory is for educational activity and coaching classes. Further, it also stated that it does not know Mr. Vipul mentioned in the complaint. In this regard, upon perusal of the complaint I note that, the complainant clearly mentioned that he received the first call from "Ideal Equity" having mobile number "7041737937". Only after this, the complainant had spoken to Mr. Vipul with Mobile Number "6359794037" who claimed to be from the Noticee's company and subsequently started trading for which he received Rs.24000/-. This was the

starting point for SEBI to inspect the Noticee, irrespective of whether Mr. Vipul was known to the Noticee or the call made to the complainant was not from the phone number registered in the Noticee's name. It was also noted that the website www.idealequity.co.in, mentioned in the complaint is the same website as of the Noticee which, as admitted, was created by it for the purpose of obtaining SEBI IA Registration. This apart, the Noticee also admitted that it had returned Rs.35,000/- to the complainant. From the aforesaid facts, it is very clear that the Noticee was doing advisory service and collected money from the complainant. In view of the above, I find no merit in the aforesaid contention of the Noticee.

23. As regards to the submission of the Noticee that as SEBI delayed its approval for granting registration of IA, during that period it was running business of Wheat and bags manufacturing as well as Online Coaching advisory and teaching classes and the amount credited in the account is from the aforesaid businesses, I note that the application was made by the Noticee for SEBI's license as an IA on the SEBI portal on March 19, 2021. Subsequently, SEBI requested for 25 documents from the Noticee June 19, 2021 followed by reminders dated September 28, 2021 and October 25, 2021. As there was no response to the said reminders, the application was finally closed due to insufficient documents on the part of the Noticee which was communicated to the Noticee vide SEBI's e-mail dated November 16, 2021. It is also observed that all the aforesaid communications were made to its e-mail id i.e. anil.mithapara143@gmail.com, which is the same email-id from which the Noticee had made the application for SEBI registration. Therefore, I note that there was no delay by SEBI in granting any approval to the Noticee as no registration has been granted to it.

24. As regards to the narration mentioned in the bank account statement as "advisory fees", the Noticee stated that only based on the same SEBI can't claim that it is doing only investment advisory service and that the amount received is for the advisory w.r.t educational activity and coaching classes. However, in this regard, I have observed from the bank statement of the Noticee that few instances specified the terms "advisory fees", "advisory charge" and "market advisory",

which clearly denotes charges collected for the purpose of market advisory services. Further, “oxford Dictionary” defines the term “advice” to mean “*having or consisting the power to make recommendations but not to take action enforcing them*”. Additionally, the Noticee has not stated what educational service it provides which can fall under the category of providing advisory service nor has provided the list of its students at the relevant time for SEBI to verify the same. Also upon perusal of the bank statement, there is no specific amount which is consistent like in the case of educational fees because students will have a set course and fees could be assigned depending on the said course. However, the bank statements shows varied amounts in the bank account of the Noticee. Therefore, educating students in no way can be treated as advice and accordingly, I find that the submission of the Noticee in this regard is vague, evasive and does not carry any merit.

25. Next, as regards the 8 phone numbers available on the Noticee’s website, it stated that all the said eight numbers were not registered in its name and it was not aware of the persons whose name they were registered on as they were not related to it. The Noticee admitted that it has only one number i.e. 9714346286 and number 9512340132 was taken for website only and it is now not in operation. In this regard, I note that all the above mentioned 8 numbers were available on the Noticee’s website which was admittedly created by it, which means the said numbers ought to belong to the Noticee, and if not the Noticee should at least know who they belong to and how they appeared on its website. Thus, I do not find any merit in this submission of the Noticee.

26. Further, from the facts mentioned in the SCN, it is inter-alia noted that the Noticee has held itself out as an Investment Advisory Company by giving investment advisory services through calls for which 8 mobile numbers have been provided on the archived pages of its website along with its ICICI bank account details and package details viz. Cash (Intraday), F&O and MCX and charged Rs. 20000, Rs. 30000, and Rs. 40000, respectively, as fees for aforesaid services.

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

28. Further, I note that the Noticee has 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 Noticee in this regard.

29. 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. Regulation 3(1) of the IA Regulations, 2013, 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"*.

30. Thereafter, I also note that it is imperative for any person carrying out investment advisory activities 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:"*

31. 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.

32. Further, 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.

33. It is noted that the Noticee was not registered with SEBI in the capacity of Investment Adviser during the period under examination. It is further noted that the Noticee received amount to the tune of Rs.17,65,690.43 in its bank account, for which the Noticee has not provided explanations as to why through the bank account was created for the sole purpose of IA services was used for its other activities even prior to receiving SEBI's intimation regarding closure of its registration application and has also not provided evidence like student list etc.

34. In view of the above, I find that aforesaid total credit of Rs.17,65,690.43 in the bank account of the Noticee was received by it as fee for investment advisory services provided by it while acting as an investment adviser without obtaining certificate of registration from SEBI. In view of the above, I find that the Noticee by acting as investment adviser within the meaning of the IA Regulations, without obtaining certificate of registration from SEBI, has 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 Noticee is liable to be imposed with penalty under Section 15EB of the SEBI Act.

35. Thereafter, I note that the SCN has called upon the Noticee to show cause as to why appropriate penalty be not imposed upon it under Section 15EB of SEBI Act for the violations alleged in the SCN. The provisions of Section 15 EB of the SEBI Act is reproduced hereunder: -

<u>Section 15 EB - Penalty for default in case of investment adviser and research analyst</u>

"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.”

36. 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.”*

37. The activities of the Noticee, 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. Further, I note that the Noticee returned Rs. 35,000/- to the complainant who vide his e-mail dated April 24, 2024 stated that Mr. Anil Talpade was innocent, however, the same e-mail talks about the complainant filing compliant against Ideal equity. Also why will Mr. Anil Talpade return Rs.35,000/- to the complainant, if he has not taken the money from him in lieu of investment advisory services, in the first place. Therefore, there is a serious contradiction in the statements presented by the Noticee. Thus, I find that the Noticee has violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations.

38. As observed above, I note that the Noticee received total credit of amounts to the tune of Rs. 17,65,690.43 in its bank account as advisory fees. These being

the proceeds of an illegal activity, are liable to be refunded to the respective clients of the Noticee.

DIRECTIONS

39. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(4), 11(4A), 11B, 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 Noticee shall refund all the money collected/received from any investors / complainants, as fees or consideration or in any other form, in respect of its unregistered investment advisory activities immediately, and in any case, within a period of three months from the date of this order.

(b) The Noticee 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 Noticee is prohibited from selling its assets, properties including mutual funds/shares/securities held by it 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 account of the Noticee, only for the purpose of making refunds to the clients who were availing the investment advisory services from the Noticee;

(e) After completing the aforesaid repayments, the Noticee 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 39 (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 Noticee. Thereafter, remaining amount, if any, will be deposited in the ‘Investors Protection and Education Fund’ maintained by SEBI;

(g) In case of failure of the Noticee 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 Noticee, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws,

(h) The Noticee is 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 39 (e) above, whichever is later;

(i) The Noticee shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in para 39 (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 Noticee is hereby imposed with penalty of Rs. 1,00,000/- (Rupees One Lakh Only) under Section 15EB of the SEBI Act,1992;

(k) The Noticee 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 Noticee may contact the support at portalhelp@sebi.gov.in.

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

41. It is clarified that the direction for refund as given in Para 39 (a) above, does not preclude the complainant/investors to pursue the other legal remedies available to them under any other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

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

43. A copy of this order shall be sent to the Noticee, 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: April 30, 2024 **G RAMAR**

Place: Mumbai **CHIEF GENERAL MANAGER**

SECURITIES AND EXCHANGE BOARD OF INDIA