National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/64735	**Date: October 25, 2024**
Circular Ref. No: 401/2024	

To All NSE Members,

Sub: **SEBI Order in the matter of M/s Equity Express Market & Research Services Proprietor – Mr. Rahul Arya**

This has reference to SEBI Order no. QJA/GR/WRO/WRO/30913/2024-25 dated October 25, 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 (2) years from the date of this order or till the date of filing of report, as directed in point (e) above, whichever is later.

Sr. no.	Name of Entity	PAN
1.	M/s Equity Express Market & Research Services (Proprietor – Mr. Rahul Arya)	ANPPA2906H

Further, SEBI vide above order has directed that if the above entity has any open position in any exchange traded derivative contracts, as on the date of this order, the entity can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier.

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

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: Order in the matter of M/s Equity Express Market and Research Services Proprietor Mr. Rahul Arya

QJA/GR/WRO/WRO/30913/2024-25

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.

In respect of:

Name of the Noticee	PAN
M/s Equity Express Market & Research Services (Proprietor – Mr. Rahul Arya)	ANPPA2906H

In the matter of M/s Equity Express Market & Research Services Proprietor – Mr. Rahul Arya

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BACKGROUND:

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted investigation based on the complaint dated January 08, 2019 received from the SEBI Registered Investment Adviser named Rahul Arya (SEBI Reg. No. INA100009309) against M/s Equity Express Market & Research Services, whose Proprietor name is also Mr. Rahul Arya (hereinafter referred as **'EEMRS/Noticee'**) alleging that the Noticee is using his SEBI Registration certificate of Investment Adviser for rendering investment advisery services**.** Another complaint was received from Mr. Mahesh Aware dated August 08, 2019 where he had, inter-alia, alleged that the Noticee has taken money from him for providing calls for trading and not returned the money.

2. Pursuant to the aforesaid investigation on the said complaints, SEBI has initiated instant proceedings under section 11(1),11(4),11(4A),11B(1) and 11B(2) read with Sections 15HA, 15HB and 15EB of the SEBI Act, 1992 against the Noticee for the alleged act of providing investment advisery services without having requisite

registration/certificate as mandated under SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as **"IA Regulations"**).

3. Subsequently, a show cause notice dated July 30, 2024 (hereinafter referred to as ***"SCN")*** was issued to the Noticee, calling upon the Noticee to show cause as to why suitable directions including directions to refund of fees collected towards unregistered investment advisery (**"*UIA*"**) service should not be issued against it under sections 11(1), 11(4) and 11B(1), of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ***"SEBI Act"***) for alleged violations of section 12(1) of the SEBI Act read with Regulation 3(1) of IA Regulations and Regulation 3(a),(b),(c),(d) and Regulation 4(1) and 4(2)(k) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ***"PFUTP Regulations"***) read with Section 12A(a), (b) and (c) and why direction under Sections 11(4A) and 11B(2) for imposing penalties under SEBI Act read with Sections 15HA, 15HB and 15EB of SEBI Act should not be issued.

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

   I. SEBI had received complaints against the Noticee wherein a SEBI Registered Investment Adviser named Rahul Arya (SEBI Reg. No.INA100009309; PAN: ALXPA9825B) filed a complaint on January 08, 2019 alleging that the Noticee is using his SEBI certificate for rendering investment advisery services. Another complainant Mr. Mahesh Aware in his complaint dated August 08, 2019 had, inter-alia, alleged that the Noticee has taken money from him for providing calls for trading and not returned his money.

   II. During investigation, it was observed that the website of EEMRS i.e. www.equityexpress.in stated to be used for the alleged investment advisory service was non-operational as on the date. The archive pages of the website were downloaded from web.archive.org to gather information and the following was observed wherein the Noticee has claimed as follows.

a. *Equity Express, is one of the leading investment advisory firm across industry. We provide best tips in Equity (Stocks, Future, options) & Commodity (MCX, NCDEX) segments. (Screenshot dated Nov 21, 2017).*

b. *Equity Express one of the most leading companies in share and commodity market. Company provides good recommendation or tips in all segments. (Screenshot dated Nov 21, 2017 and Nov 24, 2017)*

c. *Equity Express is a SEBI (Securities and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for investor protection. This difference from other makes us more disciplined, experienced, skillful and quantitative to make you desired profit from financial market by providing recommendation on suitable segments as per your risk bearing capacity. (Screenshot dated Nov 24, 2017).*

d. *We are the best in institution in providing tips across industry due to our research team that consists of highly qualified analytical experts who skilled and impeccable in their analysis. (Screenshot dated Nov 24, 2017).*

e. *Various packages are being offered for subscription at specified rates and for specific products, viz- Cash, Commodity Service, Nifty Service, Stock Future, Forex Service and Option Service. (Screenshot dated Nov 21, 2017)*

III. *Based on the information received from complainants, the KYC/AOF details and the bank statements of the bank accounts of Noticee was obtained. Details of accounts are mentioned below:*

Details of bank accounts of Noticee

Name	***Bank account no., Bank name and IFSC Code***	***Account Opening Date***	***Total credit received***
Equity Express Market and Research Services (Proprietor: Rahul Arya)	*A/c No: 091605001653* *ICICI Bank* *IFSC: ICIC0000916*	*Jan 15, 2018*	*Rs. 60,75,713.14*

Name	Bank account no., Bank name and IFSC Code	Account Opening Date	Total credit received
Equity Express Market and Research Services (Proprietor: Rahul Arya)	*A/c No: 50200028675344* *HDFC Bank* *IFSC: HDFC0001240*	*Dec 26, 2017*	*Rs. 24,57,828.34*

IV. It is observed that the address and mobile number mentioned on the website are same as mentioned in the bank account documents.

V. It is observed that from the bank KYC documents that EEMRS had received Business License from Indore Municipal Corporation on November 23, 2017 and GST Registration Certificate on November 17, 2017.

Calculation of consideration received by Noticee for investment advisory activities.

VI. <u>HDFC Bank account - 50200028675344</u> - One of the complainants Mr. Mahesh Aware provided screenshot of WhatsApp chat regarding payment of Rs.2000/- to HDFC Bank Account of entity on February 27, 2019. The corresponding entry was found in the HDFC Bank account of the Noticee as an IMPS transfer entry. Further, there are various credit entries for funds received via UPI and IMPS mode from individuals appearing to be received for UIA activities. One of the UPI credit entries has narration named "trading related". Thus, all the credits received via IMPS and UPI are also taken into account for calculation of consideration for unregistered IA activities. To summarize, total credits pertaining to narrations – "equity", "investment", "market tip", "trading related", "shear market", "unregistered", "service charges", "UPI" and "IMPS" amount to Rs. 20,31,418.34/- in HDFC Bank Account 50200028675344. Same is being taken for calculation of consideration towards UIA activities.

VII. <u>ICICI Bank account – 091605001653</u> - Another bank account of ICICI Bank with account number 091605001653 is observed to be used by the Noticee for unregistered IA (UIA) activities. The keywords mentioned above were searched for in the narrations of bank account entries. Further, it is observed from the *narrations of HDFC Bank account that the entity was using payment gateway named Paygate India Private Limited for collection of fees for UIA activities. The same payment gateway is also used for collection of amount in ICICI bank as evident from the narrations of the bank account. Further, there are various credit entries for funds received via UPI and IMPS mode from individuals appearing to be received for UIA activities. Four of the UPI credit entries and seventeen of the IMPS have narrations named "equity" or "Service charge" or "investment". Accordingly, total credits pertaining to narrations – "equity", "investment", "Paygate", "advisory", "Paynearby", "unregistered", "service charges", "UPI" and "IMPS" amount to Rs. 38,08,662/- in ICICI Bank Account 091605001653.*

VIII. To summarize, following credit amounts are alleged to have been received towards consideration for UIA activities by the Noticee-

Amount towards UIA activity

S. No.	***Bank Account***	***Period of account statement***	***Consideration for UIA activities***
1	*50200028675344 (HDFC)*	*December 1, 2017 to December 18, 2023*	*Rs. 20,31,418.34/-*
2	*091605001653 (ICICI)*	*January 15, 2018 to December 18, 2023*	*Rs. 38,08,662.86/-*
Total			*Rs. 58,40,081.20/-*

IX. Based on the factual details and observations stated herein above, it is alleged that the Notice has engaged in the activities of investment adviser without obtaining the requisite registration from SEBI, in violation of Section 12(1) of the SEBI Act, 1992, read with Regulation 3(1) of the IA Regulations, 2013.

X. It is also observed that the Noticee has wrongfully claimed the following through its website www.equityexpress.in:

"*Equity Express is a SEBI (Securities and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for investor protection."*

XI. *Thus, it was alleged that the Noticee has knowingly misrepresented itself as a SEBI registered investment advisor without holding any such certificate. Such misrepresentation to render advisery services to public is misleading and influences the decision making of investors in securities market. In view thereof, it is alleged that the said conduct of the Noticee is fraudulent in nature and in violation of provisions of Section 12A(a), (b) and (c) of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(k) of PFUTP Regulations.*

5. The aforesaid SCN was served to the Noticee through Speed Post Acknowledgment Due (SPAD) and was accordingly delivered on August 01, 2024. The Noticee vide letter dated August 21, 2024 confirmed receiving the hard copy of the SCN and requested additional time to submit reply. Thereafter, the Noticee was provided an opportunity of personal hearing before the undersigned on September 19, 2024 and was advised to submit its response of SCN before the personal hearing. The Noticee vide email dated September 15, 2024 submitted power of attorney in favour of Authorised Representative ('AR') and requested adjournment of the hearing and also sought inspection of documents collected during the investigation.

6. The above request of Noticee for inspection of documents was not accepted on the ground that all the relevant material pertaining to the instant matter was already provided to the Noticee in the form of SCN and its annexures. The same was communicated to the Noticee vide email dated September 17, 2024. Thereafter, vide email dated September 18, 2024 the AR of the Noticee sought adjournment of the personal hearing scheduled on September 19, 2024 citing illness. The request of AR was accepted and the personal hearing was accordingly adjourned to September 26, 2024. On the said date, the AR of the Noticee appeared virtually before the undersigned and admitted the violations alleged in the SCN against the Noticee. However, regarding the amount collected by the Noticee through UIA, it was argued that the amount is lesser than what is alleged in the SCN. The AR during the hearing also requested additional time to submit supplementary reply of the SCN, which was duly granted. The Noticee and its AR vide multiple letters have submitted reply of the SCN, the contentions raised therein are reproduced below:

Preliminary Contentions

a. The Noticee respectfully submits that the inordinate delay in the initiation of proceedings has significantly prejudiced the case of the Noticee herein. It is pertinent to note that the Securities and Exchange Board of India (SEBI) received the initial complaint in January 2019 whereas the Show Cause Notice (SCN) has been issued in end of July 2024. This extended delay is both unjustified and unexplained, raising serious concerns regarding the procedural fairness of the proceedings.

b. The principle of timely justice is enshrined in the legal framework, and any undue delay undermines the integrity of the regulatory process. In this case, the delay of over five years has not only impaired the Noticee's ability to mount a robust defence but has also created a significant imbalance in the proceedings, resulting in prejudice.

c. Validity of Digital Evidence: SEBI has collected digital evidence, but these are not supported by proper certificates, which raises concerns about their validity.

d. SEBI has failed to provide the inspection of the documents and further failed to provide copy of the Investigation Report including annexures thereto. The right to access relevant documents is a fundamental aspect of a fair hearing. It ensures that the parties involved have the opportunity to understand the evidence against them, prepare an adequate defense, and participate meaningfully in the proceedings. By withholding the Investigation Report, SEBI has not only impeded the Noticee's ability to respond effectively but has also compromised the integrity of the adjudicatory process.

e. Not providing the basic material relied upon by the SEBI while issuing the SCN highly prejudiced the case of the Noticee herein. The Noticee could have filed better submission in presence of the basic documents.

f. The Noticee submits that the basis of issue of the SCN is the purported Complaint made by one Mr. Rahul Arya. It is a matter of concern that SEBI felt it not necessary to record his statement and placed heavy reliance on his purported Complaint and FIR lodged by him. The Noticee in the para 7 of his letter dated 17-09-2024 addressed to SEBI requested for cross *examination of the Complainant. However, no response has been made on the Noticee's said request. The Noticee asserts that the right to cross-examine the Complainant is a fundamental component of a fair trial process. This right is essential to ensuring the integrity of the proceedings and safeguarding the principles of natural justice. By questioning the complainant, the Noticee can elucidate facts, clarify ambiguities, and bring to light any inconsistencies or potential biases in the testimony.*

g. *Not responding to the Noticee regarding the opportunity to cross-examine the Complainant not only undermines the adversarial nature of the proceedings but also creates an imbalance that adversely affects the Noticee's ability to mount a robust defense. The absence of cross-examination limits the Noticee's capacity to respond effectively to the allegations, thereby infringing upon his right to a fair hearing.*

h. *Therefore, the Noticee has a right to cross-examine the authors of the documents to test the veracity of the third-party documents. However, SEBI has not given any heed to the Noticee's request of cross-examination and therefore the Noticee is deprived of his right to challenge the decision, and is attempting to short-cut the process and fast-track the hearing on merits. This is in gross violation of the principles of fairness and natural justice.*

i. *The Noticee submits that in the absence of any appointment order of the AO, the Noticee is bound to infer that there is no such appointment order and hence, the present proceeding is without any jurisdiction and in non-compliance of the procedure prescribed under the Adjudication Rules, 1995.*

j. *It is submitted that as per Rule 4(1) of the AO Rules, the SCN can only be issued by an AO. However, the present SCN has been issued by one Mr. Abhishek Khandelwal. Therefore, it is submitted that the present SCN has been issued in violation of Rule 4(1) of the AO Rules and hence, the present proceedings against the Appellant must be dropped on this ground only.*

k. *Moreover, it is submitted that as per the legal maxim "Delegatus Non Potest Delegare", which means that a delegate cannot delegate. It is a principle that generally applies to the delegation of powers or authority by one person or entity to another. According to this maxim, if a person or entity has been* *delegated a specific power or authority, they cannot further delegate that power or authority to someone else unless expressly permitted to do so. It is submitted that the central government by making the SEBI Act, has delegated its power to SEBI to initiate appropriate proceedings, if required. SEBI, through the powers granted to it by the central government, has further delegated this task to its officers who are acting in the capacity of Quasi-Judicial Authority who also are appointed as the Adjudicating Officers.*

l. *Keeping the above in background, as the Adjudication Rules, 1995 specifically lays down for the final level of delegation to the AO, the power under Rule 4(1) of Adjudication Rules, 1995 can only be exercised by the AO only and not by any other officer.*

Submissions on Allegations of Unregistered Investment Advisery (UIA)

a. *It is acknowledged that the Noticee does not hold any SEBI registration to operate investment advisory services. However, it was denied that the Noticee had used any SEBI Registration Number as alleged in para 1 of the SCN.*
b. *The Noticee submits that it received a total amount of Rs. 7,000 from Mr. Mahesh Rajendra Aware on February 27, 2019, and March 1, 2019. The Noticee is prepared and willing to refund this amount to Mr. Mahesh Rajendra Aware, along with any other entities from whom it has received funds for investment advisory services.*
c. *The Noticee categorically denies any claims of having falsely represented its status as an Investment Advisor. It is important to clarify that the Noticee has never, in any official communication, documentation, or on its website, represented itself as a registered Investment Advisor. Any claims that may have been inferred from the screenshots of website which were downloaded by SEBI from the website www.archived.org, are either misconstrued or taken out of context. While it is acknowledged that the Noticee does not possess SEBI registration to provide investment advisory services, this fact does not constitute false representation. The Noticee has consistently acted in good faith and has never intended to mislead or deceive clients. The*

Noticee respectfully requests that these allegations be dismissed, as they are unfounded and do not accurately reflect the true nature of the Noticee's operations.

d. *The Noticee has already ceased all investment advisory services, and this action should be regarded as a significant mitigating factor when considering any potential penalty. The proactive step of halting these services demonstrates the Noticee's commitment to compliance and responsibility. In light of this, the Noticee respectfully requests that this decision be taken into account when assessing the appropriate quantum of any penalty that may be imposed.*

Submissions regarding calculation of amount received by Noticee for Investment Advisory Services:

e. *The Noticee has already accepted that it was not a SEBI registered Investment Advisory. The Noticee is ready and willing to refund the amount which he had received as an Investment Advisory Services.*

f. *The Noticee respectfully contends that SEBI's approach to filtering data from the bank statements is overly broad and lacks specificity. The reliance on key terms such as "equity", "investment", "Paygate", "advisory", "Paynearby", "unregistered", "service charges", "UPI" and "IMPS" etc. is vague and does not reflect a thorough analysis of the context of the transactions.*

g. *In annexure H provided by SEBI, there are 83 credit entries totaling Rs. 14,62,965, which represent fees received for Digital Marketing. Additionally, the Noticee received Rs. 10,000 from Rennen Software Private Limited as a loan. As previously explained, the credit entry of Rs. 51,000/- on December 26, 2017, pertains to a deposit made by the Noticee to open an account with HDFC Bank Ltd. Consequently, the Noticee received Rs. 5,07,453 from 47 credit entries specifically related to fees for investment advisory services.*

h. *Similarly, in annexure I provided by SEBI, there are 37 credit entries totaling Rs. 1476562.10, which represent fees received for Digital Marketing.*

Additionally, the Noticee received Rs.14,11,900/- and Rs.50,000/- from Rennen Software Private Limited and Just Promiine Prive Limited respectively as a loan. Further, the credit entries of Rs.1,25,000/- on 18-01-2018 and 31-10-2020 are fund transferred from Noticee's HDFC Bank Account to the Noticee's ICICI Bank Account. Consequently, the Noticee received Rs.7,45,200/- from 58 credit entries specifically related to fees for investment advisory services.

i. *The Noticee further submits that a total of Rs. 12,52,653/- has been received specifically as fees for investment advisory services, comprising Rs. 5,07,453/- from 47 credit entries in HDFC Bank and Rs. 7,45,200/- from 58 credit entries in ICICI Bank. The Noticee has already expressed a willingness to refund this amount in accordance with any directions issued by SEBI.*

7. Since the Noticee has raised , I shall address the preliminary contentions raised by the Noticee:

I. Inordinate delay in initiating the proceedings.

a) In this regard, the Noticee has contended that the inordinate delay in the initiation of proceedings has significantly prejudiced the case of the Noticee. It is stated that the complaint was filed in January 2019 whereas the SCN was issued in end of July 2024 therefore serious concern arouse regarding the procedural fairness of the proceedings. Further, he stated that this delay of more than five years has impaired the Noticee's ability to mount a robust defence. In this regard, the Noticee has also sought to rely upon several case laws in order to establish that the SCN is vitiated with delay and therefore liable to set aside.

b) In this regard, it is pertinent to mentioned that as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation. Further, I note that the investigation relating to instant matter on the role played by the Noticee, who is an unregistered intermediary is complex and time consuming process. I also note that subsequent to the examination of the aforesaid complaints, SEBI had been in continuous correspondence with various authorities and collecting the relevant data to examine the connection of the Noticee with the website www.equityexpress.com and also with that of the bank account mentioned by the complainant. For the said purpose, documents such as KYC/Account Opening Forms (AOF) from the banks were obtained and examined. Thereafter, with relevant documentary evidence, the points of action were decided upon. Accordingly, I note that after following due process for collecting and analyzing the data, it was decided to initiate the instant proceedings in respect of the Noticee qua the violations alleged in preceding paragraphs. I therefore, hold that there has been no delay in initiation of proceedings against the Noticee.

c) For the contention of delay, I shall also refer to the judgment of Hon'ble Supreme Court in ***Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (2019) SCC Online SC 294*** wherein it was held that '*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time.* <u>*What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc.*</u> (Emphasis Supplied)

d) The above was reiterated in ***Bharat J Patel & Ors. vs. SEBI*** *(Appeal No. 154 of 2020 dated 08-09-2020)* where the Hon'ble Securities and Appellate Tribunal (SAT) held that, '*b. Whether the delay would cause prejudice to the parties depend on the facts and circumstances of the case. There is no dispute on the principle that if the delay has caused prejudice to the parties then the proceedings are required to be quashed.'*

e) Further, the Hon'ble SAT in the matter of ***Bipin R Vora vs SEBI*** (decided on March 22, 2006) held that, *"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an* *investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".*

f) Accordingly, it is important to consider the facts and circumstances in the instant case. In this regard, I note that the process of fact-finding is often complex and the investigating authority has to rely on third party sources to obtain evidences/documents. I also want to add that there were multiple intervening covid induced lockdowns during 2020-2021, which posed a challenge in carrying out the aforementioned process. It is also pertinent to mention that the investigation with regard to the violation of PFUTP Regulations is an exhaustive and time-consuming process, which require detailed analysis of the case facts.

g) Further, I note that in support of the contention the reliance is also placed by Noticee upon various decisions of Hon'ble Securities and Appellate Tribunal (SAT), such as,
   - *Mr. Rajiv Bhanot & Ors. vs SEBI (Appeal No. 396 of 2018)*
   - *Ashok Shivlal Rupani & Ors Vs SEBI (Appeal No. 417/2018 dated 22-08-2019)*
   - *Bharat J Patel & Ors Vs SEBI (Appeal No. 154/2020 dated 08-09-2020)*
   - *Ashlesh Gunvantbhai Shah Vs SEBI (Appeal No. 169/2019 dated 31-01-2020)*

h) With respect to the aforesaid judgments, upon perusal of the same it is observed that either the appellant proved their inability to properly defend themselves against the allegations due to delay or the delay was proved unjustified or had rendered the proceedings infructuous which became cornerstone for the Hon'ble Tribunal while deciding the issue. The Noticee, in the instant matter, has failed to prove the same.

i) In view of the above, upon considering the facts and circumstances, I find that the instant contention of the Noticee is without any merit as the Noticee has failed to demonstrate how its ability to defend against the allegations impugned in the SCN has been prejudiced. Hence, the same cannot be accepted.

II. Inspection of essential documents not provided hence principle of natural justice violated.

a) The Noticee has stated that, SEBI has failed to provide both the inspection of the documents as well as copy of the Investigation Report including annexures thereto. It is further stated that the right to access relevant documents is a fundamental aspect of a fair hearing that ensure the parties involved to have the opportunity to understand the evidence against them to prepare an adequate defense, and participate meaningfully in the proceedings. By withholding the Investigation Report, SEBI has not only impeded the ability to respond effectively but has also compromised the integrity of the adjudicatory process.

b) Further, the Noticee stated that the denial of access to the Investigation Report creates an uneven playing field, whereby the Noticee is left without crucial information that could potentially exonerate it or mitigate its liability. Such an action contravenes the essential requirement of fair procedure and leads to a presumption of bias against the regulatory authority. In conclusion, the failure to provide the Investigation Report, upon request, constitutes a serious breach of the principles of natural justice. Not providing the basic material relied upon by the SEBI while issuing the SCN highly prejudiced the case of the Noticee herein. The Noticee could have filed better submission in presence of the basic documents.

c) For the instant contention, the Noticee has relied upon the judgment of Hon'ble Supreme Court of India in the matter of ***T. Takano vs SEBI*** [(2022) 8 SCC 162] dated 18-02-2022 wherein the Apex Court has held that:

"51. The conclusions are summarised below:

(i) The appellant has a right to disclosure of the material relevant to the proceedings initiated against him. A deviation from the general rule of disclosure of relevant information was made in Natwar Singh (supra) based on the stage of the proceedings. It is sufficient to disclose the materials relied on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;"

d) In respect of the aforesaid contentions, I note that the findings of the investigation were duly communicated to the Noticee in the form of SCN and annexures. Following is the list of annexures that were provided to the Noticee along with the SCN:

Documents	**Annexures**
Copy of complaint filed by SEBI Registered Investment Advisor (INA100009309) on January 08, 2019	**A**
Copy of complaint dated August 08, 2019 filed by Mr. Mahesh Aware	**B**
Screenshots of the webpages from website www.equityexpress.in of Noticee taken from web.archive.org	**C**
KYC/AOF details of ICICI Bank account of Noticee	**D**
KYC/AOF details of HDFC Bank account of Noticee	**E**
Account statement of ICICI Bank account of Noticee	**F**
Account statement of HDFC Bank account of Noticee	**G**
Filtered ICICI Bank account statement of Noticee displaying the entries considered for investment advisory activity	**H**

Filtered HDFC Bank account statement of Noticee displaying the entries considered for investment advisory activity	**I**

e) It is to be stated that generally, a show cause notice carries the relevant facts extracted from the Investigation Report in respect of the relevant charges with supporting documents thereto. Accordingly, I note that the allegations against the Noticee was clearly brought out in the SCN alongwith supporting documents. The SCN states that the website www.equityexpress.com was found to be associated with the Noticee wherein Noticee was allegedly claiming itself to be a SEBI registered investment adviser and was providing investment advisory services upon receipt of fees from its clients. For the said allegation, all the relevant documents were provided to the Noticee, as can be seen from the table above.

f) Further, it is pertinent to mention that the documents annexed with the SCN either are bank statements of Noticee or fetched from internet, which cannot be available with SEBI in original. Upon perusal of the letter dated 17.09.2024 requesting the inspection of document submitted by Noticee, I note that the Noticee has not specified any particular document apart from investigation report and simply stated as *'Permit inspection of the documents, data'*. As stated above, I note that all the relevant documents were already provided to the Noticee in the form of annexures to the SCN. Further, I also note that the Noticee has failed to demonstrate accurately how impediment was caused in absence of such documents/data in responding to the allegations substantiated in the SCN. Thus, the contention of the Noticee cannot be accepted.

III. Cross-examination of complainant was not allowed.

a) In this regard, the Noticee has submitted that, the basis of issue of the SCN is the purported complaint made by one Mr. Rahul Arya. It is a matter of concern that SEBI felt it not necessary to record his statement and placed heavy reliance on his purported complaint and FIR lodged by him. The

Noticee has also asserted that the right to cross-examine of the Complainant is a fundamental component of a fair trial process. This right is essential to ensuring the integrity of the proceedings and safeguarding the principles of natural justice.

b) Noticee further submitted that the absence of cross-examination limits the Noticee's capacity to respond effectively to the allegations, thereby infringing upon his right to a fair hearing. The Noticee has a right to cross-examine the authors of the documents to test the veracity of the third-party documents.

c) For the instant contention, the Noticee relied on the judgment of The Hon'ble SAT in ***Price* Waterhouse *v. Securities and Exchange Board of India***, [2011] SAT 58, which has observed:

> "*7. After hearing learned counsel on both sides and having perused the record, we are of the considered view that there has been violation of principles of natural justice in not allowing cross-examination of the witnesses whose statements are being relied upon in the show cause notice and also in not making available copies of the statements which have been relied upon by the Board in issuing the show cause notice.*
>
> *…When a fact is sought to be established on the basis of the statement of a person which is refused by the delinquent, the latter has a right to cross examine the person whose statement is sought to be relied upon. This is the bare minimum requirement of the principles of natural justice which needs to be complied with in all quasi-judicial proceedings that are conducted by the Board."*

d) For the aforesaid contention of the Noticee on not providing the opportunity to cross-examine the complainants, I shall also refer to the order of Hon'ble SAT in *Price Waterhouse* (supra) wherein it was held by the Hon'ble tribunal that cross examination of the witnesses whose statements were relied upon needs to be provided. Upon perusal of the SCN, I note that neither any statement recording was done by SEBI in the instant matter nor any statement made by individual is relied upon while framing charges against Noticee. As already discussed in preceding paragraphs, all the relied upon and relevant documents were provided to the Noticee in the form of SCN and its annexures to the Noticee. Further, I note that the documents submitted by the complainants to SEBI were also duly shared with the Noticee along with the SCN. The Noticee has acknowledged the authenticity of the said documents shared as it accepted the proof of payment provided by the complainant, Mr. Mahesh Aware and the FIR filed by Mr. Rahul Arya (SEBI Registered IA). Since, there is no reliance on any statement made by anyone in the present proceedings, the request for cross-examination by the Noticee was not accepted. Considering the above, I also note that the Noticee by making such requests was only trying to vitiate instant proceedings.

IV. SEBI placing reliance on certain documents without following proper law.

a) The Noticee submitted that SEBI's reliance on archived pages of the website and screenshots of webpages in the Show Cause Notice (SCN) raises significant concerns regarding the integrity and admissibility of such evidence. Notably, SEBI has failed to carry out any verification to ascertain the validity of this digital evidence, which is a crucial procedural requirement.

b) Under the Indian Evidence Act, 1872, specific procedures must be adhered to when presenting electronic evidence. Sections pertaining to the admissibility and authentication of digital evidence clearly outline the necessity for establishing the integrity, source, and reliability of such material. SEBI's reliance on unverified screenshots and archived pages contravenes these statutory requirements, rendering the evidence inadmissible.

c) Moreover, the principles of natural justice demand that any evidence relied upon in proceedings must be credible and verifiable. The failure to adhere to established legal standards in handling digital evidence not only jeopardizes the fairness of the process but also violates the Noticee's right to a just and equitable hearing.

d) In this regard, I note that section 1 of the Indian Evidence Act, 1872 categorically mentions that the Indian Evidence Act, 1872 applies to "*all judicial proceedings in or before any Court*". As regards the present proceedings before SEBI, it is noted that the same are quasi-judicial in nature and hence the Indian Evidence Act does not apply thereto. It is important to mention that the Noticee has raised a general question as to the veracity and reliability of the data without pointing out even a single infirmity with the data.

e) Accordingly, I note that instead of providing credible evidence and arguments in support of the contentions, the Noticee has only made unsubstantiated blanket statements. The Noticee has not brought forth any documentary evidence in support of its claims as well. Hence, I note that the instant contention of the Noticee is devoid of merit and cannot be accepted.

V. The SCN has not been issued as per the SEBI Adjudication Rules, 1995 (AO Rules) and the present proceedings are vitiated under law.

a) It was submitted that the present SCN has been issued under Rule 4(1) of the SEBI Adjudication Rules, 1995. As the Adjudication Rules, 1995 specifically lays down for the final level of delegation to the Adjudicating Officer (AO), the power under Rule 4(1) of Adjudication Rules, 1995 can only be exercised by the AO only and not by any other officer.

b) Rule 4(1) of the Adjudication Rules, 1995 has been reproduced as follows:

Holding of inquiry.

4. (1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15HA and 15HB whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E,15EA, 15EB, 15F, 15G, 15HA and 15HB, ***the Board or the adjudicating officer shall, in the first instance, issue a notice to such person*** *requiring him to show cause within such period as may be specified* *in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.* [Emphasis supplied]

c) Hence, it was contended that as per Rule 4(1) of the AO Rules, the SCN can only be issued by an AO. However, the present SCN has been issued by Mr. Abhishek Khandelwal. Therefore, it is submitted that the present SCN has been issued in violation of Rule 4(1) of the AO Rules and hence, the present proceedings against the Appellant must be dropped on this ground only.

d) In this regard, I note that Rule 4 of SEBI Adjudication Rules clearly states that for adjudging '*the Board or the adjudication officer shall issue a notice'*. Hence, I note that the power has been vested upon the Board i.e. SEBI [Section 2(1)(a) of SEBI Act] as well along with AO to issue a notice or Show Cause Notice. Further, by virtue of Section 19 of SEBI Act, I note that the Board can delegate its power and functions to any member or officer of the Board. The said provision is stated hereunder,

"19. Delegation.

The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary."

e) Further, I note that as per SEBI (Delegation of Statutory and Financial Powers) Order, 2019, the power to issue and sign show cause notice(s) in respect of proceedings under Section 11(4A) and 11B(2) of the SEBI Act read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (AO Rules) has been delegated to Deputy General Manager (DGM). Since, the SCN in the instant matter has been issued by Mr. Abhishek Khandelwal who is holding the position of DGM, the contention of the Noticee that the SCN was issued in violation of Rule 4(1) of the Adjudication Rules, 1995 is devoid of merit cannot be sustained.

8. In view of the above, pursuant to examining the contentions raised regarding principles of natural justice, I note that the SCN and HN were duly served to the Noticee along with all the documents relevant in the instant matter. Further, sufficient time was provided to the Noticee to respond to the SCN. Thereafter, an opportunity of personal hearing was given to the Noticee, which was duly availed. Hence, the principles of natural justice were complied with respect to the Noticee and I shall now proceed to deal with the key issue involved in the instant matter.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I shall proceed to examine the allegations raised against the Noticee in the SCN. For the same, I have considered the material available on record including the complaints and replies of the Noticee. Accordingly, 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 SEBI Act, 1992 read with IA Regulations, 2013 and PFUTP Regulations, 2003, while providing the services related to Investment Advisery without having proper registration?***

10. Before proceeding further in the matter, it is pertinent to refer to the relevant provisions of the SEBI Act, IA Regulations and the PFUTP Regulations, alleged to have been violated by the Noticee, as per the SCN. The said provisions of law are reproduced herein below:

<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:"

<u>Section 12A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.</u>

"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 recognized 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 or 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.

<u>IA Regulations</u>

<u>Regulation 2(1)(g) – Definition of Consideration</u>

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

<u>Regulation 2(1)(l) – Definition of Investment Advice</u>

"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:"

PFUTP Regulations, 2003

Section 2 – Definitions

(1) In these regulations, unless the context otherwise requires,—

…

(b) "dealing in securities" includes:

…

(ii) such acts which may be knowingly designed to influence the decision of investors in securities;

…

(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;

Section 3 - Prohibition of certain dealings in securities

“No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Actor the rules and the regulations made there under”.

Section 4- Prohibition of manipulative, fraudulent and unfair trade practices

(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.

(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 and which is designed or likely to influence the decision of investors dealing in securities;

11. I shall now proceed to examine the issue on merits.

12. I note from SCN that the archive pages of the website www.equityexpress.in were downloaded from web.archive.org to gather information as the website was not active during investigation. Following was observed therein:

“a. Equity Express, is one of the leading investment advisory firm across industry. We provide best tips in Equity (Stocks, Future, options) & Commodity (MCX, NCDEX) segments. (Screenshot dated Nov 21, 2017)

b. Equity Express one of the most leading company in share and commodity market. Company provide good recommendation or tips in all segments. (Screenshot dated Nov 21, 2017 and Nov 24, 2017)

c. <u>Equity Express is a SEBI (Securities and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for investor protection. This difference from other makes us more disciplined, experienced, skillful</u> and quantitative to make you desired profit from financial market by providing recommendation on suitable segments as per your risk bearing capacity. (Screenshot dated Nov 24, 2017)

d. We are the <u>best in institution in providing tips across industry</u> due to our research team that consists of highly qualified analytical experts who skilled and impeccable in their analysis. (Screenshot dated Nov 24, 2017)

e.<u>Various packages are being offered for subscription at specified rates</u> and for specific products, viz- Cash, Commodity Service, Nifty Service, Stock Future, Forex Service and Option Service. (Screenshot dated Nov 21, 2017) [Emphasis supplied]

f. Contact Us
510 Shagun Tower Vijay Nagar Indore (MP) India
Mobile: +919990881588
Email: support@equityexpress.in"

13. From the aforesaid contents of the website of www.equityexpress.com, I note the following-

a. Equity Express was claiming itself to be an investment adviser who provides tips across different segments in equity and commodity.
b. Equity Express was claiming itself to be a SEBI registered investment adviser and one that complies with all the norms made by SEBI for investor protection and are more disciplined and experienced.

c. For providing the services, Equity Express had various packages which it sold to its clients at specified rates for subscription. These packages were for various products like cash, commodity, stock future etc.

14. In order to unearth the connection between the Noticee and the aforesaid website www.equityexpress.com, I note from SCN that the HDFC bank account details provided by the complainant, Mr. Mahesh Aware, was perused and further details were sought from the bank of the Noticee viz. KYC/AOF, Account statement etc. Based on the PAN obtained in the KYC/AOF of the said HDFC bank account, other bank accounts linked to the said PAN of the Noticee were examined. Upon verification and examination of the KYC/AOF details obtained from the banks, it was noted that the mobile number and address in the KYC/AOF was same as mentioned in the aforesaid website. Further, Details of bank accounts associated with the Noticee obtained during investigation which was allegedly used to collect money from clients for UIA are mentioned below:

Details of bank accounts of Noticee

<table>
<tr><th>Name</th><th>Bank account no., Bank name and IFSC Code</th><th>Account Opening Date</th><th>Mobile number and address as per KYC/AOF</th></tr>
<tr><td>Equity Express Market and Research Services (Proprietor: Rahul Arya)</td><td>A/c No: 091605001653
ICICI Bank
IFSC: ICIC0000916</td><td>Jan 15, 2018</td><td rowspan="2">9990881588;
510 Shagun Tower Vijay Nagar Indore</td></tr>
<tr><td>Equity Express Market and Research Services (Proprietor: Rahul Arya)</td><td>A/c No: 50200028675344
HDFC Bank
IFSC: HDFC0001240</td><td>Dec 26, 2017</td></tr>
</table>

15. I also note from SCN that the bank KYC documents revealed that EEMRS received Business License from Indore Municipal Corporation on November 23, 2017 and GST Registration Certificate on November 17, 2017. Upon perusal of the same, I note that both of these documents have the same address i.e. *510 Shagun Tower Vijay Nagar Indore*, as mentioned on the website www.equityexpress.com. I note that the Noticee in its reply has not denied the above findings.

16. In view of the above, it is established that the website www.equityexpress.com belonged to the Noticee. I shall now examine the allegations of unregistered investment advisery services rendered by the Noticee.

17. In this connection, it is relevant to refer to Regulation 2(1)(m) of the IA Regulations which 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.

18. I also note that, in terms of Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, 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"*.

19. It is imperative that any person carrying out investment advisery activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of the SEBI Act and the Regulations framed thereunder. In this regard, Section 12(1) of SEBI Act 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:"

20. Therefore, I note that in order to obtain 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 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.

21. Further, the IA Regulations requires minimum professional qualification and prescribes mandatory net-worth. 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.

22. In the present matter, I note that the Noticee was not registered with SEBI in the capacity of Investment Adviser while acting as investment adviser through the website www.equityexpress.com. The Noticee has admitted that he does not possess SEBI registration to provide investment advisery services. The contents of the website, as mentioned in Paragraph 12 above, clearly reveals that the activities mentioned on the website is nothing but the activities related to investment advisery. Further, I note that the bank accounts of Noticee was used to receive money from clients, where the complainant Mr. Mahesh Aware was also making payment and the Noticee has admitted receiving the same. Therefore, it is clearly established that Noticee was engaged in IA activities without obtaining the requisite registration from SEBI as per IA Regulations.

Calculation of consideration/fees collected by Noticee through investment advisery activities

23. I note from SCN that the bank statements of the Noticee were examined wherein various transactions with the narration of the word, such as, equity, investment, market tip, trading related, share market, unregistered, service charges were found. Thus, I note that the Noticee was collecting money from clients for IA activities.

24. <u>HDFC Bank account - 50200028675344</u> - One of the complainants, Mr. Mahesh Aware, has provided screenshot of WhatsApp chat regarding payment of Rs.2000/- to HDFC Bank Account of the Noticee on February 27, 2019. The corresponding entry was found in the HDFC Bank account of the Noticee as an IMPS transfer entry. Further, there were various credit entries for funds received via UPI and IMPS mode from individuals appearing to be received for UIA activities. One of the UPI credit entries has narration named "trading related". Thus, all the credits received via IMPS and UPI were also taken into account for calculation of consideration for unregistered IA activities. To summarize, total credits pertaining to narrations – "equity", "investment", "market tip", "trading related", "shear market", "unregistered", "service charges", "UPI" and "IMPS" came to an amount of Rs.20,31,418.34 in HDFC Bank Account 50200028675344. The same is being taken for calculation of consideration towards UIA activities.

25. In this regard, the Noticee has admitted in its reply that, it received a total amount of Rs.7000/- from Mr. Mahesh Rajendra Aware on February 27, 2019 and March 1, 2019. The Noticee also stated that it is prepared and willing to refund this amount to Mr. Mahesh Rajendra Aware, along with any other entities from whom it has received funds for investment advisery services.

26. <u>ICICI Bank account – 091605001653</u> - Another bank account of ICICI Bank with account number 091605001653 was observed to be used by the Noticee for UIA activities. Further, it was observed from the narrations of HDFC Bank account that the Noticee was using payment gateway named 'Paygate India Private Limited' for collection of fees for UIA activities. The same payment gateway is also used for

collection of amounts in ICICI bank as evident from the narrations of the bank account. Further, there were various credit entries for funds received via UPI and IMPS mode from individuals appearing to be received for UIA activities. Four of the UPI credit entries and seventeen of the IMPS have narrations named “equity” or “Service charge” or “investment”. Accordingly, total credits pertaining to narrations – “equity”, “investment”, “Paygate”, “advisory”, “Paynearby”, “unregistered”, “service charges”, “UPI” and “IMPS” came to an amount of Rs.38,08,662/- in ICICI Bank Account 091605001653.

27. To summarize, following credit amounts are alleged to have been received towards consideration for UIA activities by the Noticee-

Amount received towards UIA activity

S. No.	Bank Account	Period of account statement	Total credit received	Consideration for UIA activities
1	50200028675344 (HDFC)	December 1, 2017 to December 18, 2023	Rs. 60,75,713.14	Rs. 20,31,418.34
2	091605001653 (ICICI)	January 15, 2018 to December 18, 2023	Rs. 24,57,828.34	Rs. 38,08,662.86
			Total	Rs. 58,40,081.20

28. In this regard, I note that the Noticee in its submission has contested the amount specified in the SCN and has provided breakup of the amount credited in its aforesaid 2 (two) bank accounts and has specified the total amount of investment advisery fees collected by the Noticee. Hence, I note that the Noticee have admitted that it was involved in providing investment advisery services to the clients and collected the fees for the said purpose as well. Accordingly, the Noticee is required to refund the money collected as advisory fees to their clients and submit a completion report in this regard to SEBI. It is therefore, at the time of submitting the said completion report to SEBI, the complete details on the extent of the credits received by the Noticee in his bank accounts, as stated in the SCN, along with the supporting documents, duly certified by an independent Chartered Accountant, may be provided to SEBI, as claimed hereinabove.

29. In view of the above, I find that the Noticee by acting as an investment adviser within the meaning of the IA Regulations, without obtaining requisite certificate of registration from SEBI has acted in total disregard to the requirements of law. Therefore, I conclude that Noticee who was running the scheme of UIA activities, has violated Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations.

30. With respect to the other allegation regarding the conduct of the Noticee being fraudulent upon the investors and potential investors by misrepresenting itself as a SEBI registered IA, it was observed that the Noticee has wrongfully claimed the following through its website *www.equityexpress.in*:

> "*Equity Express is a SEBI (Securities and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for investor protection.*"

31. In this regard, I note that it is an admitted fact that Noticee is not registered as an investment adviser with SEBI. Hence, from the above, I note that the Noticee created a false picture by portraying itself as a SEBI registered investment advisory firm on its website www.equityexpress.in to induce the clients into availing the services it offered. The act of the Noticee to actively conceal the material information is a non-genuine and a deceptive act and has been made with an intent to influence the clients to avail of his advisory services and to deal in securities. In my view, to misrepresent oneself as a SEBI registered Investment Advisor without actually obtaining one amounts to misrepresentation and misleading the investors. Such reckless conduct which was intended to knowingly misrepresent the truth or concealment of material fact and also a suggestion as to a fact which is not true by one who does not believe it to be true constitutes '*fraud*' as per Regulation 2(c) of the PFUTP Regulations.

32. In this regard, I note that Regulation 3 of PFUTP regulations prohibits certain dealings in securities wherein manipulative or deceptive methods are used, or any entity employs any devise or scheme or artifice to defraud in connection with dealing

in or issuing securities and also engage in any act, practice, course of business which operate as fraud or deceit upon any person in connection any dealing in or issue of securities. Further, Regulation 4(2)(k) states that dealing in securities shall be deemed to be manipulative fraudulent or unfair trade practice if any person disseminates information which he knows to be false or misleading, through any media either physical or digital, and is designed to influence the decision of investors in securities.

33. In this regard, 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*."

34. The observation recorded by the Hon'ble Supreme Court of India in the matter of ***Kanaiyalal Baldevbhai Patel*** (*Supra*) is also worth quoting: "...*A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation*

of the facts made by the first person, the latter would not have acted in the manner he did...".

35. I further note that the Hon'ble Supreme Court in the same judgment has also observed, *"the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation...."*

36. Therefore, I conclude that the acts of the Noticee of resorting to misrepresentation and spreading falsehood regarding Equity Express being a SEBI registered IA are fraudulent in nature, having the potential to fraudulently induce the investors to deal in securities by availing the services of the Noticee.

37. Thus, I note that the Noticee by presenting itself as a SEBI registered IA, without obtaining the necessary certificate of registration as an investment adviser and knowingly publishing false and misleading information on its website, Noticee had used non-genuine, deceptive means like engaging in business of UIA by falsely portraying itself as a SEBI registered investment advisory firm, created thereby defrauded investors and potential investors, which, I find is in violation of the provisions of Regulation 3(a), (b), (c) & (d) and 4(1) and 4(2)(k) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992.

38. I note that the SCN has called upon the Noticee to show cause as to why appropriate penalty be not imposed under Sections 15EB, 15HB and 15HA of SEBI Act for the violations alleged in the SCN. Section 15EB which is a penal provision was inserted vide the Finance Act, 2018 came into effect on 08-03-2019. Prior to that, for the violations of IA Regulations, penalty used to be imposed under Section 15HB which is a miscellaneous penal provision. It was observed that Noticee has collected money for its UIA services prior to and post 2019 hence there is application of both Section 15HB and 15EB. Section 15EB, 15HB and 15HA of the SEBI Act are reproduced hereunder: -

<u>Section 15EB - 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."

<u>Section 15HA - Penalty for fraudulent and unfair trade practices</u>

"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".

<u>15HB. Penalty for contravention where no separate penalty has been provided.</u>

"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."

39. From the above, I note that the Noticee's activities show that he was acting as an investment adviser through the website www.equityexpress.com without holding the requisite certificate of registration as investment adviser from SEBI. Further, the Noticee knowingly misrepresented itself as a SEBI registered entity to investors /clients and collected money from the investors. Such misleading representations are deceptive and fraudulent in nature and hence in violation of Regulation 3(a), (b), (c) & (d), 4(1) and 4(2)(k) of the PFUTP Regulations. Further, the Noticee continuously received investment advisory fees in its bank account of HDFC and ICICI, in violation of Regulation 3(1) of the IA Regulations and Section 12(1) of the SEBI Act. Consequently, I find that the Noticee is liable to be imposed with penalty under both Sections 15HA and 15EB/15HB of the SEBI Act.

40. For this purpose, 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:

41. 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 SEBI Act and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, 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 advisery 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 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;

c. The repayments to the investors shall be effected only through bank transfers with 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 accounts of the Noticee, only for the purpose of making refunds to the clients who were availing the investment advisery 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 Point (a) and (d) above shall cease to operate upon filing of such report;

f. However, if the Noticee fails to submit the duly certified report by an independent Chartered Accountant within stipulated time as directed above, the recovery proceedings against the Noticee under Section 28A of SEBI Act shall be initiated for the amount of **Rs.58,40,081.20** (Fifty eight lakhs forty thousand eighty one rupees and twenty paise).

g. 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 (2) years** from the date of this order or till the date of filing of report, as directed in point (e) above, whichever is later;

h. The Noticee shall not undertake, either during or after the expiry of the period of restraint and prohibition, as mentioned in Point (g) above, either directly or indirectly, investment advisery services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws;

i. The Noticee is hereby imposed with penalty of **Rs.10,00,000/-** (Rupees Ten Lakhs Only) under Section 15HA of the SEBI Act and **Rs.1,00,000/-** (Rupees One Lakh Only) under Section 15EB/15HB of the SEBI Act;

j. 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.

42. It is hereby clarified that if the Noticee has any open position in any exchange traded derivative contracts, as on the date of this order, the Noticee can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticee is permitted to settle the pay in and pay out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

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

44. The direction for refund as given in Para 41(a) above does not preclude the complainants/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.

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

46. A copy of this order shall be sent to the Noticee, all the recognized Stock Exchanges, the relevant banks, Depositories, Registrar and Transfer Agents of

Mutual Funds and BSE Administration and Supervision Ltd., to ensure that the directions given above are strictly complied with.

47. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

Date: October 25, 2024 **G RAMAR**

Place: Mumbai **QUASI JUDICIAL AUTHORITY**

SECURITIES AND EXCHANGE BOARD OF INDIA