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National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/65298	Date: November 28, 2024
Circular Ref. No: 409/2024	

To All NSE Members,

Sub: **SEBI Direction in reference to Order in the matter of unregistered investment advisory activities by Mr. Ankit Gupta (Proprietor of Niftymaker.com)**

This has reference to SEBI Order no. QJA/GR/NRO/NRO-DIV-III/31003/2024-25 dated November 27, 2024 wherein, SEBI has prohibited following entity from selling assets, properties including mutual funds/ shares/ securities in demat and physical form except for the purpose of effecting refunds, as directed in SEBI order.

Sr. no.	Name of Entity	PAN
1	Mr. Ankit Gupta (Proprietor of Niftymaker.com)	BAIPG5490H

Further, SEBI vide email dated November 28,2024 has directed to restrain the above entity from buying and selling in all scrips and allow selling of securities only for the purpose of effecting refunds as mentioned in SEBI order.

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

National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

Annexure: SEBI Order in the matter of unregistered investment advisory activities by Mr. Ankit Gupta (Proprietor of Niftymaker.com)

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of:

Name of the Noticee	**PAN**
Mr. Ankit Gupta (Proprietor of Niftymaker.com)	BAIPG5490H

In the matter of unregistered Investment Advisory activities by Mr. Ankit Gupta (Proprietor of Niftymaker.com)

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination on receipt of a complaint against Mr. Ankit Gupta (Proprietor of Niftymaker.com) (hereinafter referred to as '**Noticee**') and prima facie found that they were carrying out the activity of Investment Adviser without obtaining registration from SEBI in violation of Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as '**IA Regulations**'). Further, it was also found that his website, http://www.niftymaker.com/ was disseminating false and misleading claims and concealed various facts from investors in violation of the provisions of section 12A(a), (b), (c) of SEBI Act, 1992 and Regulations 3(a), (b), (c), (d),

4(2) (k) and (s) of the Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003 (hereinafter referred as '**PFUTP Regulations, 2003**').

SHOW CAUSE NOTICE:

2. Subsequently, a show cause notice dated September 5, 2024 (hereinafter referred to as '**SCN**') was issued to the Noticee, calling upon to show cause as to why suitable directions including directions for debarment, refund of fees/monies collected from the investors should not be issued against him under sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act and why penalty under Section 15HB and Section 15HA of SEBI Act should not be imposed for the aforementioned violations of provisions of SEBI Act, PFUTP Regulations, 2003 and IA Regulations.

3. The SCN contained the following observations and allegations against the Noticee with regard to SEBI's examination of his activities:

   a) Securities and Exchange Board of India (hereinafter, referred to as '**SEBI**') received complaint from Mr. Ravi Kumar against Niftymaker.com vide letters dated October 22, 2018 and November 28, 2018, wherein, the complainant had mentioned that the entity "niftymaker.com" was acting as an investment adviser for a long time and providing paid investment advisory without registration from SEBI and cheating investors**.**

   b) SEBI sent letter dated Nov 27, 2018 to Niftymaker Advisory at Address: Office No. 25, Laxmi Nagar, Near Laxmi Nagar Metro Station, New Delhi, India-110092, seeking information regarding the general nature of the Noticee's business, details of the Noticee's clients who had availed investment advisory and/or portfolio management services, amount collected from them in his bank accounts, copy of account statements, scheme details, pamphlets, brochures related to advisory services etc. The letter returned undelivered. In this regard, an email dated December 19, 2018 was also sent to the Noticee.

c) The Noticee replied vide email (niftymaker25@gmail.com) dated December 24, 2018 and provided certain information viz.:
   i. Address: H. No. 414. Ward No. 15, Moti Colony, Near Agra Chowk, Palwal, Haryana-121102
   ii. Ph No: 9034906086
   iii. Pan: BAIPG5490H
   iv. Name: Ankit Gupta
   v. Research Consultant & Teaching About Stock Market Course
   vi. Research Analyst from August 2017
   vii. www.niftymaker.com: Domain & hosting by Ankit
   viii. Services provided: Knowledge & Consult about stock market, Total Charges: Rs 89700

d) Upon perusal of the weblink http://www.niftymaker.com/ provided by the complainant, it was noted that the website was inaccessible. However, upon perusal of the archived pages of the website, it was observed that the website contained the following information:

1. About Us:

Nifty maker provides live Indian stock market recommendations on your mobile phone and on yahoo messenger. Nifty maker is one of the leading tips provider in India. We have a specialized team of stock market analyst who study market daily, infact minute after minute. We don't mind whether market is bullish or bearish as we know how to deal with both of these in best way. Work as per our strategy and recommendations you will stay in profit.

Nifty Maker have team of expert analysts with vast experience in capital market research. We provide recommendations for stocks, future and option

(F&O) traded in NSE and BSE.

- We provide recommendations to our clients through SMS and Live Chat.
- Excellent services to our clients is our utmost priority
- Our research team consists of highly qualified and experienced analysts who use state of art technologies and software's to find the right opportunities in the market with high accuracy
- We have dedicated team of Business Analysts which take care of clients personally online and by telephonic assistance round the clock.

Nifty Maker provide purely intraday Nifty Put & Option tips in just Rs 4000 Per month. We provide daily 1 Nifty fut, Nifty option, Equity calls in Indian stock market. We provide live calls at market hours. Weekly we provide 4-5 calls and most probably to hit the 4 Target and 1 sl. It means u get Rs.2000 in a week by trading 1 lot in Nifty option.

We provide 15 days Trial Package in just Rs 2500. In which u can check our accuracy and u will know how to trade in our calls. We also provide free trial of 2 Days to know the calls timing but in free trial no one can judge the accuracy and u will know how to trade in our calls. We also provide Free Trial accuracy in 2 days and 1 week or more Trial is not possible. So Just take our Trial pack in Rs. 2500 or Join 1 month Pack in Rs. 4000.

We don’t say u will earn 1 Lac or more from our tips Because some tips provider show big profit in market but they can’t get. They all are fake. We just say you can earn above Rs 10000 with our tips in a month by trading 1 lot.

2. **Our Services**:

a) INTRADAY NIFTY OPTION

- Daily 1-2 Nifty Option Call
- All Calls Single Target & Exit
- Daily 15-20 Points per lot
- Accuracy above 90%

b) INTRADAY STOCK CASH

- Daily 2-3 Stock Cash Calls
- All Calls Single Target & Exit
- Each Call gain above 1%
- Accuracy above 94%

c) INTRADAY STOCK FUTURE

- Daily 1-2 Stock Future Call
- All Calls Single Target & Exit
- Each Call gain above 1%
- Accuracy above 95%

d) NTRADAY NIFTY FUTURE

- Daily 1-2 Nifty Future Call
- All Calls Single Target & Exit
- Daily 25-30 points per lot
- Accuracy above 90%

3. Our Pricing:

a) Intraday Nifty Future

15 DAYS	Rs. 2500/-
1 MONTH	Rs. 4000/-
3 MONTHS	Rs. 9000/-

6 MONTHS	Rs. 15000/-
12 MONTHS	Rs. 25000/-

b) Intraday Nifty Option

15 DAYS	Rs. 2500/-
1 MONTH	Rs. 4000/-
3 MONTHS	Rs. 9000/-
6 MONTHS	Rs. 15000/-
12 MONTHS	Rs. 25000/-

c) Intraday Stock Future

15 DAYS	Rs. 3000/-
1 MONTH	Rs. 5000/-
3 MONTHS	Rs. 12000/-
6 MONTHS	Rs. 20000/-
12 MONTHS	Rs. 32000/-

d) Intraday Stock Cash

15 DAYS	Rs. 2500/-
1 MONTH	Rs. 4000/-
3 MONTHS	Rs. 9000/-
6 MONTHS	Rs. 15000/-
12 MONTHS	Rs. 25000/-

e) Gold Package (Nifty +Stock Cash)

15 DAYS	Rs. 3500/-
1 MONTH	Rs. 6000/-
3 MONTHS	Rs. 14000/-
6 MONTHS	Rs. 22000/-
12 MONTHS	Rs. 35000/-

f) Platinum Package (Nifty +Stock Future)

15 DAYS	Rs. 4000/-
1 MONTH	Rs. 7500/-
3 MONTHS	Rs. 18000/-
6 MONTHS	Rs. 30000/-
12 MONTHS	Rs. 50000/-

4. **Contact Info**:

Phone: +91-9034906086

Chat: niftymaker@yahoo.com,E: info@niftymaker.com

e) SEBI, vide e-mail dated August 18, 2023, enquired from National Stock Exchange (NSE), Bombay Stock Exchange (BSE), Metropolitan Stock Exchange of India (MSEI), whether the Noticee is registered with them in the capacity of an Authorized Person. In response, NSE informed that the Noticee is registered with Angel One, a broker, in the capacity of an Authorized Person.

f) Thereafter, SEBI, vide email dated August 21, 2023, enquired the details of the Noticee from Angel One. Angel One, vide email dated August 21, 2023, provided the details w.r.t registration of Noticee as an Authorised Person, such as:

i. The Noticee was registered with Angel One Ltd. from September 2013 to September 2014 and again from 2018 to 2021. The details of Exchange wise registration are as follows:

AP Name	Segment	Reg. Date	Cancellation date
ANKIT GUPTA	NSE CM	10-Sep-13	17-Sep-14
	NSE FO	10-Sep-13	17-Sep-14
	NSE CDS	10-Sep-13	17-Sep-14
	MCX	18-Sep-13	30-Sep-14

AP Name	Segment wise (Exchange)	Reg. Date	Cancellation date
ANKIT GUPTA	NSE CM	12-Apr-18	08-Sep-21
	NSE FO	12-Apr-18	08-Sep-21
	MCX	14-May-18	15-Sep-21
	BSECM	17-Apr-18	14-Sep-21
	BSE FO	17-Apr-18	14-Sep-21
	BSE CDS	17-Apr-18	14-Sep-21

ii. Total 65 clients were associated with Angel One Limited through the Noticee and total brokerage amount of Rs.28,278.86 was paid to him since association till July 08, 2019.

g) Trade details of the Noticee was sought from NSE, BSE and MSEI vide email dated August 19, 2023. NSE provided the trade details of the Noticee in equity and equity derivative segment.

h) Demat account details of the Noticee was sought from NSDL and CDSL vide email dated August 24, 2023. CDSL vide email dated August 25, 2023 provided demat account details of Noticee. NSDL, vide email dated August 25, 2023, informed that no Beneficial Owner Account exists.

i) Thereafter, KYC and A/c statements associated with Yes Bank, Axis Bank, HDFC Bank, SBI and IDBI Bank account of Noticee were obtained from bank, details of the same are as follows:

i. **A/c no.-** 072261900000450
Bank Name: Yes Bank
Name of Account holder: Niftymaker Consultant
Nature of Industry: Stock Market Consultancy
Mailing Address: H. No. 414. Ward No. 15, Moti Colony, Vil- Palwal, Teh-Palwal, Dist-Palwal, Near Agra Chowk, Palwal, Haryana-121102
Registered Address: Near Agra Chowk, Opp New Sohna Mode, Vil-Palwal, Teh-Palwal, Dist-Palwal, , Palwal, Haryana-121102
Telephone No. 9034906086
Email ID- niftymaker25@gmail.com
Proprietor Personal Information:
PAN: BAIPG5490H
Name: Mr. Ankit Gupta
Date of First Transaction: July 07, 2017
Date of Account Closing: Feb 08, 2019
Statement period: July 07, 2017 (first transaction) to Feb 08, 2019 (last transaction)
Amount of credit received in the Bank Account during the statement period is Rs.20,11,865/-
Status of account: Closed. The account had NIL closing balance as on Feb 08, 2019.

ii. **A/c no.-** 072263300000610
Bank Name: Yes Bank
Title of Account: Wealth Consultant
Proprietor: Ankit Gupta
Date of First Transaction: July 21, 2020
No relevant transaction observed.

iii. **A/c no –** 072251400000450
Bank Name: Yes Bank
Customer Name: Ankit Gupta
PAN: BAIPG5490H
Mailing Address: H. No. 414. Ward No. 15, Moti Colony, Palwal, , Near Agra Chowk, Palwal, Haryana-121102
Telephone No. 9034906086
Email ID- niftymaker25@gmail.com
Date of First Transaction: July 14, 2017
Date of Account Closing: Feb 06, 2019
Statement period: July 14, 2017 (first transaction) to Feb 06, 2019
Amount of credit received in the Account during the statement period is Rs 14,159/-
Status of account: Closed. The account had NIL closing balance as on Feb 06, 2019.

iv. **A/c no. –** 916020063483943
Bank Name: Axis Bank
Name of Account holder: M/s Niftymaker Consultant
Name of Contact person: Ankit Gupta
Date of Incorporation: 20/05/2016
Customer Business detail: Coaching of Financial Markets

Communication Address: House No. 414. Ward No. 15, Moti Colony, Vil- Palwal, The-Palwal, Dist-Palwal, Near Agra Chowk, Palwal, Haryana-121102

Email ID- niftymaker25@gmail.com

Contact No. 9728768203

First transaction in Bank Account: October 28, 2016

Last transaction in Bank Account: July 13, 2017

Statement period: October 28, 2016 to July 13, 2017

Amount of credit received during the aforesaid statement period: Rs 17,39,416

v. **A/c no.-** 911010063965207

Bank Name: Axis Bank

Name of Account holder: Ankit Gupta

Date of Birth: 25/12/1990

Contact No. 9728768203

Email ID- ANKITGUPTA251290@YAHOO.COM

Address: S/O Anil Gupta, H. No-414. Ward No. 15, Moti Colony, Palwal, Haryana-121102

First transaction: December 14, 2011

Statement period: April 21, 2013 (effective date of IA Regulations, 2013) to September 13, 2023

Total credit amount during the aforesaid statement period is Rs 43,42,693/-

vi. **A/c no.-** 50100082914163

Bank Name: HDFC Bank

Name of Account holder: Ankit Gupta

Date of Birth: 25/12/1990

Address: H. No-414. Ward No. 15, Moti Colony, Palwal, Haryana-121102

Email ID- ANKITGUPTA251290@YAHOO.COM

Contact No.-9728768203

Account Opening Date: January 14, 2015

Statement period: April 21, 2013 (effective date of IA Regulations, 2013) to September 13, 2023

Total credit amount during the aforesaid statement period is Rs 1,11,48,239/-.

vii. **A/c No.-** 0343104000042918

Bank Name: IDBI Bank

Name of Account holder: Ankit Gupta

Date of Birth: 25/12/1990

Address: H. No-414. Ward No. 15, Moti Colony, Palwal, Haryana-121102

Email ID- ANKITGUPTA251290@YAHOO.COM

Phone: 9728768203

Account Opening Date: 08/11/2011

Account Closing Date: 12/03/2018

Statement period: April 21, 2013 (effective date of IA Regulations, 2013) to March 12, 2018

Total credit amount during the aforesaid statement period is Rs 20,11,047/-

viii. **A/c No.-** 0343106000011839

Bank Name: IDBI Bank

Name of Account holder: Ankit Gupta

Account Opening Date: 04/03/2015

Account Closing Date: 03/03/2016

No relevant transaction observed

j) **Analysis of Bank Statements**

Upon perusal of the Bank Statements, the following was observed:

i. In the bank accounts, wherein, Noticee is the account holder/proprietor, several credit entries narration having keywords viz. advisory fees, 1 MONTH OPTION PAC, 4MONTHSUBSCRIBE, STOCK TIPS, fees for intraday, FINANCIAL TIPS etc. were noted.

ii. Further, in the aforesaid bank accounts, credit entries in denomination of price packages mentioned in the website or in multiple of that was observed.

iii. Based on the above, it was alleged that that an amount of Rs.39,75,001/- (Rupees Thirty Nine Lakh Seventy Five Thousand and One) was collected as fees towards providing Investment Advisory services during the period April 21, 2013 to September 13, 2023.

k) Examination of available Phone Number: The phone number 9034906086 which was given in the website niftymaker.com was searched on findandtrace.com. and its status was shown to be active.

l) From the examination and analysis of Bank statements carried out, it was observed that the Noticee was receiving fund as per the various packages offered in his website and credit entries having narration advisory fees, fees for intraday etc. were also observed in his bank account. Hence, it was alleged that the Noticee was receiving money against the unregistered investment advisory business being conducted by him. Further, it was noted that neither niftymaker.com nor the Noticee was registered with SEBI under the capacity of Investment Adviser.

As per Regulation 2(m) of the SEBI (Investment Advisors) Regulations, 2013

"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;

It was observed that the Noticee through the website niftymaker.com was providing investment advise for which he was charging fees from his clients and acted as an unregistered Investment Advisor.

m) In view of the above, it was alleged that the Noticee had carried out the activity of Investment Adviser without obtaining registration from SEBI, thereby, the Noticee had allegedly violated Section 12 (1) of the SEBI Act read with Regulation 3 (1) of the IA Regulations, 2013.

n) The website niftymaker.com also mentioned the following:

> *'…Nifty Maker is one of the leading tips provider in India. We have a specialized team of stock market analyst who study market daily, infact minute after minute.*
>
> *Niftymaker have team of expert analysts with vast experience in capital market research. Our research team consists of highly qualified and experienced analysts who use state of art technologies and software's to find the right opportunities in the market with high accuracy. We have dedicated team of Business Analysts which take care of clients personally online and by telephonic assistance round the clock….'*

”Nifty Maker provide purely intraday Nifty Put & Option tips in just Rs 4000 Per month. We provide daily 1 Nifty fut, Nifty option, Equity calls in indian stock market. We provide live calls at market hours. Weekly we provide 4-5 calls and most probably to hit the 4 Target and 1 sl. It means u get Rs. 2000 in a week by trading 1 lot in Nifty option..”

“We dont say u will earn 1 Lac or more from our tips Because some tips provider show big profit in market but they cant get. They all are fake. We just say you can earn above Rs 10000 with our tips in a month by trading 1 lot.”

o) From the above statements mentioned in the website of niftymaker.com, it was understood that the website was disseminating false and misleading claims. Further, there was no record that there was a team of analysts in the company. In addition, the website had made false and misleading claims and concealed that ‘investments in the securities market are subject to market risk and an investment made by a client may also run into losses and may even become zero’. Therefore, it was alleged that the Noticee had violated the provisions of section 12A(a), (b), (c) of SEBI Act, 1992 and Regulations 3(a), (b), (c), (d),4(2) (k) and (s) of the PFUTP Regulations, 2003.

4. The aforesaid SCN was issued and served to the Noticee by SPAD at the address provided by him. Noticee replied to the said SCN vide replies dated October 02, 2024 and November 01, 2024. Thereafter, in the interest of natural justice, Noticee was granted an opportunity of personal hearing on October 29, 2024 vide hearing notice dated October 14, 2024. However, vide email dated October, 20, 2024, the Noticee requested for an adjournment of the hearing which was acceded to and accordingly, the hearing was rescheduled on November 08, 2024. The Noticee along with his Authorized Representative attended the said hearing.

5. The submissions of the Noticee vide replies dated October 02, 2024 and November 01, 2024 are summarized as below:

a) *I was only providing recommendation and no customized services were given to anyone. The screenshot attached with the notice only has words like recommendation, fundamental and technical analysis. Further, the complainant who has claimed that I was providing advisory services never stated that he has availed the services. Hence, cannot justify that the I was providing advisory services.*
b) *I was providing education services and research recommendations to people.*
c) *The details displayed in the website clearly indicates research services and not advisory services. I was charging clients for different packages under my research services.*
d) *I was associated with Angel One as Authorised Person from September 2013 to September 2014 and again in 2018 to 2021. I had applied for SEBI Research Analyst registration in 2019 where I had disclosed the same to SEBI. No objection was raised by SEBI and the application was accepted without any hurdles. Assuming, its within the ambit of the regulation, I continued with my AP registration with Angel One. Later, I received an email from SEBI officer stating that it is not allowed and hence, I surrendered my AP registration in 2021.*
e) *I have traded in my demat account. However, the recommendations that were provided to my clients were not traded in my account after obtaining registration with SEBI as Research Analyst in 2019.*
f) *The bank accounts were opened to accept the fees from the clients as well as students availing my courses. I got registered with SEBI as Research Analyst July, 09 2019, the fees collected after the registration are for the services provided as a Research Analyst. Further, in April 2013 the SEBI (Research Analyst) Regulations, 2014 did not exist, it only came into force*

on September 2014. Since, I was not providing investment advisory services, April 2013 shall not be considered for inspection and there was no regulation for providing research recommendations.

g) *The clients usually are not particular about narration hence while making the payment they put any narration they feel comfortable. It does not establish that I was providing advisory services. Further, I would again like to state that I was not providing investment advisory services and my activities of proving research recommendations do not come under the ambit of investment advisory services. The amount is a sum of fees collected as research recommendation fees and fees for imparting education in the stock market.*

h) *I was offering research services and education services to my clients and students respectively. However, I deny those were investment advisory services. The details in the website clearly states recommendation services and not investment advisory services. Further, bank entries with narration advisory fees, fees for intraday cannot establish that I was providing customized services by doing risk profiling of clients. I would again like to inform that I was only providing research recommendations. The amount shown in my bank statement relate to mobile repair charges, stock market coaching classes, stock price alerts, and some transactions with friends, relatives, and personal activities.*

i) *I was posting recommendation in groups and through broadcast channels. The clients use to take trade as per their risk appetite. Hence, I do not need to procure the IA license. Further, I have already obtained SEBI registration as Research Analyst on July, 2019 as my services falls under SEBI (Research Analyst) Regulations, 2014.*

j) *There were few people on and off helping me with research activities on goodwill basis who helped me in a friendly manner. Further, I had provided the disclaimer with respect to risk involved in securities time and again over the call and while sending messages through my broadcast channel. I* *accept that it was not mentioned in my website, but deny that it was not communicated to my clients.*

k) *I have noticed that SEBI issues warning letters to people providing unregistered services. I accept that I had provided unregistered services but not as an investment adviser but as a research analyst from September, 2014 to June, 2019 however, no warning letters were issued to me for not providing such services.*

l) *I would humbly request to handle my matter from the view that my intension was not to provide unregistered services but I was not aware of the regulation.*

CONSIDERATION OF ISSUES AND FINDINGS:

6. 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 Advisory without having proper registration?***

7. 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:

SEBI Act

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

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

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

"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.

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:"

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;

(s) mis-selling of securities or services relating to securities market;

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by ─

(i)knowingly making a false or misleading statement, or

(ii)knowingly concealing or omitting material facts, or

(iii)knowingly concealing the associated risk, or

(iv)not taking reasonable care to ensure suitability of the securities or service to the buyer;

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

9. I note from the observations of SEBI that the weblink http://www.niftymaker.com/ provided by the complainant was inaccessible. However, upon perusal of the archived pages of the website, it was observed that the website contained the following information:

About Us:

Nifty maker provides live Indian stock market recommendations on your mobile phone and on yahoo messenger. Nifty maker is one of the leading tips provider in India. We have a specialized team of stock market analyst who study market daily, infact minute after minute. We don't mind whether market is bullish or bearish as we know how to deal with both of these in best way. Work as per our strategy and recommendations you will stay in profit.

Nifty Maker have team of expert analysts with vast experience in capital market research. We provide recommendations for stocks, future and option
(F&O) traded in NSE and BSE.

- We provide recommendations to our clients through SMS and Live Chat.
- Excellent services to our clients is our utmost priority
- Our research team consists of highly qualified and experienced analysts who use state of art technologies and software's to find the right opportunities in the market with high accuracy
- We have dedicated team of Business Analysts which take care of clients personally online and by telephonic assistance round the clock.

Nifty Maker provide purely intraday Nifty Put & Option tips in just Rs 4000 Per month. We provide daily 1 Nifty fut, Nifty option, Equity calls in Indian stock market. We provide live calls at market hours. Weekly we provide 4-5 calls and most probably to hit the 4 Target and 1 sl. It means u get Rs.2000 in a week by trading 1 lot in Nifty option.

We provide live calls at market hours. Weekly we provide 4-5 calls and most probably to hit the 4 Target and 1 sl. It means u get 2000rs in a week by trading 1 lot in Nifty option.

We provide 15 days Trial Package in just Rs 2500. In which u can check our accuracy and u will how to trade in our calls. We also provide free trial of 2 Days to know the calls timing but in free trial no one can judge the accuracy and u will know how to trade in our calls. We also provide Free Trai accuracy in 2 days and 1 week or more Trial is not possible. So Just take our Trial pack in Rs. 2500 or Join 1 month Pack in Rs. 4000.

We don't say u will earn 1 Lac or more from our tips Because some tips provider show big profit in market but they can't get. They all are fake. We just say you can earn above Rs 10000 with our tips in a month by trading 1 lot.

Our Services:

e) INTRADAY NIFTY OPTION

- Daily 1-2 Nifty Option Call
- All Calls Single Target & Exit
- Daily 15-20 Points per lot
- Accuracy above 90%

f) INTRADAY STOCK CASH

- Daily 2-3 Stock Cash Calls
- All Calls Single Target & Exit
- Each Call gain above 1%
- Accuracy above 94%

g) INTRADAY STOCK FUTURE

- Daily 1-2 Stock Future Call
- All Calls Single Target & Exit
- Each Call gain above 1%
- Accuracy above 95%

h) NTRADAY NIFTY FUTURE

- Daily 1-2 Nifty Future Call

- All Calls Single Target & Exit
- Daily 25-30 points per lot
- Accuracy above 90%

Our Pricing:

g) Intraday Nifty Future

15 DAYS	Rs. 2500/-
1 MONTH	Rs. 4000/-
3 MONTHS	Rs. 9000/-
6 MONTHS	Rs. 15000/-
12 MONTHS	Rs. 25000/-

h) Intraday Nifty Option

15 DAYS	Rs. 2500/-
1 MONTH	Rs. 4000/-
3 MONTHS	Rs. 9000/-
6 MONTHS	Rs. 15000/-
12 MONTHS	Rs. 25000/-

i) Intraday Stock Future

15 DAYS	Rs. 3000/-
1 MONTH	Rs. 5000/-
3 MONTHS	Rs. 12000/-
6 MONTHS	Rs. 20000/-
12 MONTHS	Rs. 32000/-

j) Intraday Stock Cash

15 DAYS	Rs. 2500/-
1 MONTH	Rs. 4000/-
3 MONTHS	Rs. 9000/-
6 MONTHS	Rs. 15000/-
12 MONTHS	Rs. 25000/-

k) Gold Package (Nifty +Stock Cash)

15 DAYS	Rs. 3500/-
1 MONTH	Rs. 6000/-
3 MONTHS	Rs. 14000/-
6 MONTHS	Rs. 22000/-
12 MONTHS	Rs. 35000/-

l) Platinum Package (Nifty +Stock Future)

15 DAYS	Rs. 4000/-
1 MONTH	Rs. 7500/-
3 MONTHS	Rs. 18000/-
6 MONTHS	Rs. 30000/-
12 MONTHS	Rs. 50000/-

Contact Info:

Phone: +91-9034906086

Chat: niftymaker@yahoo.com,E: info@niftymaker.com

10. I further note that SEBI obtained the KYC and A/c statements associated with Yes Bank, Axis Bank, HDFC Bank, SBI and IDBI Bank account of Noticee from bank, details of which are as follows:

i. **A/c no.-** 072261900000450

Bank Name: Yes Bank

Name of Account holder: Niftymaker Consultant

Nature of Industry: Stock Market Consultancy

Mailing Address: H. No. 414. Ward No. 15, Moti Colony, Vil- Palwal, Teh-Palwal, Dist-Palwal, Near Agra Chowk, Palwal, Haryana-121102

Registered Address: Near Agra Chowk, Opp New Sohna Mode, Vil-Palwal, Teh-Palwal, Dist-Palwal, , Palwal, Haryana-121102

Telephone No. 9034906086

Email ID- niftymaker25@gmail.com

Proprietor Personal Information:

PAN: BAIPG5490H

Name: Mr. Ankit Gupta

Date of First Transaction: July 07, 2017

Date of Account Closing: Feb 08, 2019

Statement period: July 07, 2017 (first transaction) to Feb 08, 2019 (last transaction)

Amount of credit received in the Bank Account during the statement period is Rs.20,11,865/-

Status of account: Closed. The account had NIL closing balance as on Feb 08, 2019.

ii. **A/c no.-** 072263300000610

Bank Name: Yes Bank

Title of Account: Wealth Consultant

Proprietor: Ankit Gupta

Date of First Transaction: July 21, 2020

No relevant transaction observed.

iii. **A/c no –** 072251400000450

Bank Name: Yes Bank

Customer Name: Ankit Gupta

PAN: BAIPG5490H

Mailing Address: H. No. 414. Ward No. 15, Moti Colony, Palwal, , Near Agra Chowk, Palwal, Haryana-121102

Telephone No. 9034906086

Email ID- niftymaker25@gmail.com

Date of First Transaction: July 14, 2017

Date of Account Closing: Feb 06, 2019

Statement period: July 14, 2017 (first transaction) to Feb 06, 2019

Amount of credit received in the Account during the statement period is Rs.14,159/-

Status of account: Closed. The account had NIL closing balance as on Feb 06, 2019.

iv. **A/c no. –** 916020063483943

Bank Name: Axis Bank

Name of Account holder: M/s Niftymaker Consultant

Name of Contact person: Ankit Gupta

Date of Incorporation: 20/05/2016

Customer Business detail: Coaching of Financial Markets

Communication Address: House No. 414. Ward No. 15, Moti Colony, Vil- Palwal, The-Palwal, Dist-Palwal, Near Agra Chowk, Palwal, Haryana-121102

Email ID- niftymaker25@gmail.com

Contact No. 9728768203

First transaction in Bank Account: October 28, 2016

Last transaction in Bank Account: July 13, 2017

Statement period: October 28, 2016 to July 13, 2017

Amount of credit received during the aforesaid statement period: Rs.17,39,416

v. **A/c no.-** 911010063965207
Bank Name: Axis Bank
Name of Account holder: Ankit Gupta
Date of Birth: 25/12/1990
Contact No. 9728768203
Email ID- ANKITGUPTA251290@YAHOO.COM
Address: S/O Anil Gupta, H. No-414. Ward No. 15, Moti Colony, Palwal, Haryana-121102
First transaction: December 14, 2011
Statement period: April 21, 2013 (effective date of IA Regulations, 2013) to September 13, 2023
Total credit amount during the aforesaid statement period is Rs.43,42,693/-

vi. **A/c no.-** 50100082914163
Bank Name: HDFC Bank
Name of Account holder: Ankit Gupta
Date of Birth: 25/12/1990
Address: H. No-414. Ward No. 15, Moti Colony, Palwal, Haryana-121102
Email ID- ANKITGUPTA251290@YAHOO.COM
Contact No.-9728768203
Account Opening Date: January 14, 2015
Statement period: April 21, 2013 (effective date of IA Regulations, 2013) to September 13, 2023
Total credit amount during the aforesaid statement period is Rs.1,11,48,239/-.

vii. **A/c No.-** 0343104000042918
Bank Name: IDBI Bank
Name of Account holder: Ankit Gupta
Date of Birth: 25/12/1990
Address: H. No-414. Ward No. 15, Moti Colony, Palwal, Haryana-121102
Email ID- ANKITGUPTA251290@YAHOO.COM
Phone: 9728768203
Account Opening Date: 08/11/2011
Account Closing Date: 12/03/2018
Statement period: April 21, 2013 (effective date of IA Regulations, 2013) to March 12, 2018
Total credit amount during the aforesaid statement period is Rs.20,11,047/-

viii. **A/c No.-** 0343106000011839
Bank Name: IDBI Bank
Name of Account holder: Ankit Gupta
Account Opening Date: 04/03/2015
Account Closing Date: 03/03/2016
No relevant transaction observed

11. Upon perusal of the Bank Statements, I note that SEBI observed as below:

a) In the bank accounts, wherein, Noticee is the account holder/proprietor, several credit entries narration having keywords viz. advisory fees, 1 MONTH OPTION PAC, 4MONTHSUBSCRIBE, STOCK TIPS, fees for intraday, FINANCIAL TIPS etc. were noted.

b) Further, in the aforesaid bank accounts, credit entries in denomination of price packages mentioned in the website or in multiple of that was observed.

c) Based on the above, it was alleged that that an amount of Rs.39,75,001/- (Rupees Thirty Nine Lakh Seventy Five Thousand and One) was collected as fees towards providing Investment Advisory services during the period April 21, 2013 to September 13, 2023.

12. I also note that the phone number 9034906086, which was given in the website niftymaker.com, was searched on findandtrace.com. and its status was shown to be active.

13. From the examination and analysis of Bank statements carried out, I note that it was observed during examination that the Noticee was receiving fund as per the various packages offered in his website and credit entries having narration advisory fees, fees for intraday etc. were also observed in his bank account. Hence, it is established that the Noticee was receiving money against the unregistered investment advisory business being conducted by him. Further, it is noted that there was no registration with SEBI in the name of niftymaker.com or the Noticee, in the capacity of Investment Adviser.

14. From the above facts and discussions, I find that the Noticee was acting as an Investment Adviser. However, I note that he was not registered as an IA.

15. I note that Regulation 2(1)(m) of the IA Regulations defines the term 'investment adviser'. As per Regulation 2(1)(m) of the IA Regulations, investment adviser means any person, who is engaged in the business of providing investment advice to clients or other person or group of persons for consideration. Further, it includes any person who holds himself out as an 'investment adviser'. Regulation 2(1)(m) of the IA Regulations refer to terms 'consideration' and 'Investment advice'. As per Regulation 2(1)(g) of the IA Regulations, consideration means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice. As per

Regulation 2(1)(l) of the IA Regulations, 'investment advice' means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning. However, advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public, shall not be an investment advice within the meaning of Regulation 2(1)(l) of the IA Regulations.

16. 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".

17. It is imperative that any person carrying out investment advisery activities has to necessarily obtain registration from SEBI and conduct his 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:"*

18. I further 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:

a) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 along with requisite non-refundable application fee;

b) 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:

   i. 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;

   ii. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

   iii. 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.

c) Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

19. Further, the IA Regulations provides for the minimum professional qualification and prescribes mandatory net-worth requirement. Further, it inter-alia provides for disclosures of any conflict of interest, risk profiling of clients, maintenance of records related to client assessments and the suitability of advice. The prescriptions in the IA Regulations are intended to safeguard the interest of investors and curb the perpetration of unregistered entities entering the field of investment advisory services and indulging in unscrupulous market practices.

20. In view of the totality of the matter, it is evident that the Noticee was acting as an "investment adviser" within the meaning of the term as defined in the IA Regulations without obtaining mandatory registration from SEBI.

21. I note that while admitting to giving tips and recommendations on stocks to the clients, the Noticee has contended that he was only providing research services and education services to his clients and students respectively and was not providing investment advisory services. In this regard, I note that the Noticee has not submitted any documentary evidence to demonstrate that the tips and recommendations provided by him to his clients were in the nature of research recommendations and not in the nature of investment advisers. This apart, I also note that the Noticee was engaged in giving recommendations and tips

without being registered with SEBI either as an investment adviser or research analyst. I note that the Noticee has also contended that he got to know about the requirement of getting registration from SEBI after receiving notice from SEBI. In this regard, I note that it is a settled principle that *'Ignorantia juris neminem excusal'* which means that 'ignorance of law is no excuse for breaking it'. In view of the above, I find no merit in the contentions of the Noticee.

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

22. I note from SCN that the several bank statements of the Noticee were examined wherein various transactions with the narration having keyword, such as, advisory fees, 1 MONTH OPTION PAC, 4MONTHSUBSCRIBE, STOCK TIPS, fees for intraday, FINANCIAL TIPS etc. were observed. Thus, I note that the Noticee was collecting money from clients for IA activities.

23. It was further observed and alleged that an amount of Rs.39,75,001/- (Rupees Thirty Nine Lakh Seventy Five Thousand and One) was collected as fees towards providing Investment Advisory services during the period April 21, 2013 to September 13, 2023.

24. With regards to the same, I note that while admitting to collecting fees, the Noticee has submitted that the fees collected was as research recommendation fees and fees for imparting education in the stock market and the bank entries with narration advisory fees, fees for intraday cannot establish that I was providing customized services by doing risk profiling of clients. The Noticee has further submitted that the amount shown in his bank statement relate to mobile repair charges, stock market coaching classes, stock price alerts, and some transactions with friends, relatives, and personal activities.

25. In this regard, I note that the contention of the activities being in the nature of research analyst and not investment advisor has already been dealt in the preceding paras. I also note that the Noticee has not submitted any documentary evidence in support of his claim that the credits in the bank accounts examined, were relating to various other activities, as claimed by him, neither he has explained the reason for most of such credits being in the multiples of the package amount mentioned on his website www.niftymaker.com.

26. Hence, I note that the Noticee was involved in providing investment advisory services to the clients without registration and admittedly collected fees from the clients. Accordingly, the Noticee is required to refund the money collected as advisory fees to his 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.

27. Accordingly, I find that the Noticee, as brought out above, seen in the backdrop of the above mentioned provisions, has violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the IA Regulations.

28. With regards to the allegation regarding the conduct of the Noticee being fraudulent upon the investors and potential investors by disseminating false and misleading claims, I note that the website niftymaker.com mentioned the following:

'…Nifty Maker is one of the leading tips provider in India. We have a specialized team of stock market analyst who study market daily, infact minute after minute.

Niftymaker have team of expert analysts with vast experience in capital market research. Our research team consists of highly qualified and experienced analysts who use state of art technologies and software's to find the right opportunities in the market with high accuracy. We have dedicated team of Business Analysts which take care of clients personally online and by telephonic assistance round the clock….'

"Nifty Maker provide purely intraday Nifty Put & Option tips in just Rs 4000 Per month. We provide daily 1 Nifty fut, Nifty option, Equity calls in indian stock market. We provide live calls at market hours. Weekly we provide 4-5 calls and most probably to hit the 4 Target and 1 sl. It means u get Rs. 2000 in a week by trading 1 lot in Nifty option.."

"We dont say u will earn 1 Lac or more from our tips Because some tips provider show big profit in market but they cant get. They all are fake. We just say you can earn above Rs 10000 with our tips in a month by trading 1 lot."

29. From the above statements mentioned in the website of niftymaker.com, I note that the website was disseminating false and misleading claims as there was no record that there was a team of analysts in the company. Further, the website had made false and misleading claims like earning more than Rs.10,000/- with his tips and the website also concealed the info that investments in the securities market are subject to market risk and an investment made by a client may also run into losses and may even become zero.

30. In this regard, I note that it is an established fact that Noticee is not registered as an investment adviser with SEBI. Hence, from the above, I note that the Noticee used false and misleading claims to induce clients into availing the services he 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, the aforesaid act of the Noticee 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.

31. 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.

32. 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*."

33. 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*...".

34. 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...."*

35. Therefore, I conclude that the acts of the Noticee of resorting to misrepresentation and spreading falsehood regarding niftymaker.com having a team of expert analyst, assuring that one can earn above Rs.10,000/- and concealing the info related to risk associated with investments in the securities market, are fraudulent in nature, having the potential to fraudulently induce the investors to deal in securities by availing the services of the Noticee.

36. Thus, I note that the by disseminating false and misleading claims on his website, Noticee had used non-genuine and deceptive means and 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.

DIRECTIONS

37. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4), and 11B (1) of the SEBI Act, do hereby issue the following directions:

a) The Noticee shall refund the advisory fee (called by whatever name) received by him to his clients in the manner as detailed hereinafter;

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 Noticee shall accept refund claims/ requests for a period of 3 months from the date of public notice, as directed under para 37(b) above;

d) The Noticee shall within a period of four months from the date of public notice, as directed under para 37(b) above, carry out and complete the refund exercise;

e) Upon expiry of four months from the date of public notice, any balance of such advisory fee that remains with the Noticee, due to his inability to contact the client or otherwise, as directed in para 37(a) above, shall be deposited in a dedicated escrow account, to be opened and maintained by the Noticee for a period of one year and utilized only for the purpose of refund to the clients. Thereafter, the amount lying in the said escrow account shall be transferred to the Investors Protection and Education Fund maintained by SEBI;

f) The repayments to the claimants or clients shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channel, which ensures audit trail to identify the beneficiaries of repayments;

g) The Notices is prohibited from selling assets, properties including mutual funds/ shares/ securities in demat and physical form except for the purpose of effecting refunds, as directed above. Further, the banks are directed to allow debit from the bank accounts of the Noticee, only for the purpose of making refunds to the clients who were availing the investment advisory services from the Noticee;

h) 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, along with the complete details on the extent of the stated credits received in the aforementioned accounts, as mentioned in the SCN, including the supporting documents, duly certified by an independent Chartered Accountant. The direction at para 37(g) above shall cease to operate upon filing of such report. In case of disbursal of any amount from the said escrow account, the Noticee shall also file a report of such disbursal with SEBI, within a period of 15 days, after expiry of one year, as directed in para 37(e) above, duly certified by an independent Chartered Accountant;

i) 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 shall be initiated for the amount of **Rs.39,75,001/- (Rupees Thirty Nine Lakh Seventy Five Thousand and One)** under Section 28A of SEBI Act including such other provisions contained in securities laws.

j) The Noticee shall not undertake, 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;

k) The Noticee is hereby imposed with penalty of Rs.5,00,000/- (Rupees Five Lakhs Only) under Section 15HA of the SEBI Act and Rs.1,00,000/- (Rupees One Lakh Only) under Section 15HB of the SEBI Act;

l) 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.

38. The direction for refund, as given in Para 37 above, shall not preclude the clients/ investors to pursue 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.

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

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

Date: November 27, 2024 **G RAMAR**

Place: Mumbai **CHIEF GENERAL MANAGER**

SECURITIES AND EXCHANGE BOARD OF INDIA