

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

Noticees	PAN
Shri Pushpendra Bhalse, proprietor of Heaven Research Security Advisory	BFFPB3552K

In the matter of Unregistered Investment Adviser

1. Present order is being passed in compliance with order dated February 08, 2023 passed by Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**SAT**") in Appeal No. 171 of 2023 whereby Honb'le SAT *inter alia* directed as under:

"4. We accordingly while affirming the violations and the directions issued by the WTM in the impugned order, we remit the matter to the WTM only on the question to decide as what is the actual amount that was received by the appellant towards advisory services. Necessary evidence may be filed by the appellant which will be considered and appropriate orders would be passed by the WTM within three months from today after giving an opportunity of hearing. The appeal is partly allowed."

2. Aforesaid SAT Appeal No. 171 of 2023 was filed by Shri Pushpendra Bhalse, proprietor of Heaven Research Security Advisory (hereinafter referred to as "**the Noticees**") before Hon'ble SAT, challenging the order no. WTM/AB/WRO/WRO/21394/2022-23 dated November 24, 2022 (hereinafter referred to as "**the Final Order**") passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"). The Final Order came to be passed by SEBI in the proceedings emanating from issue of show cause notice dated July 31, 2021 (hereinafter referred to as "**SCN**") issued by SEBI to the aforesaid Noticees

wherein *inter alia* it was alleged that the Noticees were engaged in providing unregistered investment advisory services without obtaining registration from SEBI as required under Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”). Further, it was alleged that the Noticees used Easebuzz account and bank account (account number 275011100000566) held with Andhra Bank to receive fees from various entities for the purpose of providing such advisory services. The amounts received in ease buzz account were in turn transferred to the Andhra Bank account of the Noticees. The total amount received in the said bank account during the period November 21, 2016 to November 11, 2019 for providing such advisory services was alleged to be Rs. 19,50,832. The SCN called upon the Noticees to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B(1) of the SEBI Act, 1992 should not be issued against them for the alleged violations.

3. After the aforesaid SCN was issued to the Noticees, an opportunity of hearing was provided to the Noticees by SEBI and thereafter, the Final Order was passed by SEBI issuing the following directions to the Noticees:

“28. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4) and 11B read with of Section 19 of the SEBI Act, 1992, hereby direct that:

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

b. The Noticees shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;

c. The repayments to the clients/complainants/investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;

d. After completing the refund as directed in para 28(a) above, within a period of 15 days, the Noticees shall file a report detailing the amount refunded to SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051. The report should be duly certified by an independent Chartered Accountant and indicate the amount, mode of payment by banking transactions, name of the parties, communication address, mobile numbers and telephone numbers etc.;

e. The remaining balance amount shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/complainants/investors who were availing the investment advisory services from the Noticees. Thereafter, remaining amount if any will be deposited in the Investor Protection and Education Fund maintained by SEBI;

f. The Noticees are restrained from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds/ depositing balance amount with SEBI, as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/investors/complainants who were availing the investment advisory services from the Noticees and depositing balance amount with SEBI, as directed in this order, from the bank accounts of the Noticees;

g. The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 6 months from the date of this order or till the expiry of 6 months from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in para 28(a) and 28(e) above, whichever is later;

h. Upon submission of report on completion of refunds to complainants/ investors to SEBI and deposit of the balance money with SEBI, if any, the direction at para 28(f) above shall cease to operate within 15 days thereafter;

i. The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 28(g) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.”

4. Aggrieved by the aforesaid order of SEBI, the Noticees filed Appeal No. 171 of 2023 before Hon'ble SAT. Vide its order dated February 08, 2023, Hon'ble SAT partly allowed the appeal and while affirming the violations and the directions issued in the Final Order, remitted the matter to SEBI only to decide the actual amount received by the Noticees towards advisory services. Hon'ble SAT also directed that necessary evidence may be filed by the Noticees and appropriate order be passed in the matter after giving an opportunity of hearing to the Noticees. Thereafter, the file in the matter was placed before me for granting a date for hearing in the matter, as directed by the Hon'ble SAT. Vide letter dated March 21, 2023, the Noticees were advised to submit necessary evidence as directed by Hon'ble SAT. The hearing in the matter was fixed for March 31, 2023. However, hearing on the said date could not be held as the Noticees sought adjournment of hearing. Accordingly, hearing in the matter was adjourned to April 03, 2023. On the date fixed for hearing, Authorised Representative of the Noticees appeared and made submissions of behalf of the Noticees. Written submissions was also filed by the Authorised Representative of the Noticees, during the hearing.
5. In their written submissions filed in the present proceedings, the Noticees have *inter alia* submitted that the amount of Rs. 19,50,832 received in lieu of unregistered investment advisory services, as mentioned in the Final Order, is incorrect as the said amount includes personal entries of the Noticees such as *inter se* transfers in family, friends, cash deposits, etc. As per the Noticees, the amount received in the said account includes the following which is not towards fee for advisory fees:

S. No.	Date	Amount (in Rs.)	Depositor	Relationship with Noticee
1.	11-01-2017 to 15-11-2019	2,72,510	Noticee from his savings account	Self
2.	19-12-2016	20,000	Noticee through mobile banking	Self
3.	21-11-2016 to 20-02-2019	2,49,000	Noticee in the form cash	Self
4.	25-02-2019 to 26-08-2019	34,810	Divya Gupta	Wife
5.	15-01-2018 to 20-08-2019	1,08,400	Ankit Gupta	Friend
6.	02-07-2019 and 17-08-2019	5,500	Rishabh Mishra	Friend
7.	15-08-2019	600	Vikas Managre	Friend
8.	07-08-2019	14,950	Avinsh Mandloi	Friend
9.	19-03-2019 to 12-07-2019	5,450	Ankush Rathore	Friend
10.	15-04-2019 to 05-08-2019	21,500	Manoj Kumar	Cousin
11.	16-07-2019 and 09-05-2019	3,000	Monu Nihale	Cousin
12.	29-05-2018 and 15-06-2018	19,000	Manish Bhalse	Brother
13.	22-05-2018	2,000	Akash Pandey	Cousin
14.	18-05-2018	24,000	Kalpana Yadav	Relative
15.	09-07-2019	11,250	Gaurav Bajaj	Friend
16.	05-03-2019 and 13-03-2019	35,000	Kamta Singh	Friend
17.	03-06-2019 to 05-07-2019	7,500	Jagdeep Pandey	Friend
18.	26-02-2019 to 06-04-2019	5,150	Sanjay Dwivedi	Friend
19.	07-04-2018 to 19-06-2019	93,400	Mahesh Tillore	Friend
20.	21-06-2018 and 12-06-2019	36,500	Nitin Sachdev	Friend
21.	15-05-2019	4,100	Mayur Banodha	Friend
22.	02-04-2019 and 03-04-2019	3,480	Vishnu Chouhan	Friend
23.	08-08-2019 and 20-08-2019	2,900	UPI reversal	self
	Total	9,80,000		

6. The Noticees have submitted that Rs. 2,58,382 have been refunded to a complainant viz. Shri Bhagwana Ram Bana, who had filed the complaint with SEBI, in five different tranches on February 04, 2019, February 12, 2019, February 20, 2019, March 14, 2019 and March 20, 2019. The Noticees have also submitted that they have made few refunds in the form of cash, the details of which is not available with Noticees.

7. The Noticees also filed affidavits from the following depositors mentioned in para 5 above:

- Puspendra Bhalse
- Divya Gupta
- Vikas Managre
- Avinsh Mandloi
- Ankush Rathore
- Manoj Kumar
- Monu Nihale
- Manish Bhalse
- Akash Pandey
- Kalpana Yadav
- Gaurav Bajaj
- Kamta Singh
- Sanjay Dwivedi
- Mahesh Tillore
- Nitin Sachdev
- Mayur Banodha
- Vishnu Chouhan

8. Further, vide email dated April 06, 2023, the Noticees have submitted extract of bank account statement of account number 237101504095 held with ICICI Bank Ltd., showing transfer of Rs 14,950 to the Noticees' Andhra Bank account. The Noticees have also submitted extract of bank account statement of Ms. Divya Gupta for account number 15020100004244 held with UCO Bank showing transfers of total funds of Rs. 17,810 to the Noticees' Andhra Bank account.

Consideration of Submissions and findings:

9. I have considered the aforementioned order dated February 08, 2023 passed by Hon'ble SAT in the matter, submissions made by the authorised representative of the Noticees during the hearing held on April 03, 2023 and written submissions filed during hearing and further submission made via email dated April 06, 2023, on behalf of the Noticees.

10. Before proceeding further, it would be appropriate to mention here that the Final Order was passed against the Noticees. In the said order, it was found that the Noticees were carrying out investment advisory services without obtaining a certificate of registration and, therefore, violated Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013. Various directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 were issued to the Noticees, including the direction to refund an amount of Rs. 19,50,832 to the investors within three months. In the Final Order, the said amount was calculated

on the basis of the credits received in the bank account (account number 275011100000566) of the Noticees held with Andhra Bank.

11. Hon'ble SAT vide its order dated February 08, 2023, while affirming the violations and the directions issued in the Final Order remitted the matter to SEBI only to decide the actual amount received by the Noticees towards advisory services after considering the evidence that may be filed by the Noticees. Therefore, for proper adjudication of the issues at hand, it would be appropriate to understand the background, in which the aforesaid direction came to be issued by the Hon'ble SAT, which is mentioned in para three of the SAT order and reproduced as under:

“.....

3. However, it has been urged, that various entries in the bank account are not towards advisory fees received by the appellant but was for other purposes for which relevant details have been given in the memorandum of the appeal. Without going into veracity of such contention which are raised before us for the first time, we find it appropriate that these figures are rechecked by the WTM.

.....”

12. As can be observed from the relevant extract of the order dated February 08, 2023 quoted above, Hon'ble SAT observed that the contention regarding receipt of funds other than those towards the advisory services provided by the Noticees, was made by the Noticees before Hon'ble SAT for the first time. I note that the contention was not raised by the Noticees in their reply or during the hearing in the proceedings before SEBI pursuant to which the Final Order was passed in the matter. I also note that in their submissions in the said proceedings, the Noticees had denied any knowledge of the said bank account held with Andhra Bank and the easebuzz account, which were used to receive fee towards investment advisory services and maintained that both accounts, the easebuzz account and the Andhra Bank account, did not belong to him but to Shri Avinash Jain, who had misused the documents of Shri Pushpendra Bhalse to open and operate the said accounts.

13. With respect to the submissions made by the Noticees, in the present proceedings, I note that the Noticees have identified the credit transactions in the statement of Andhra Bank account (a/c no. 275011100000566) and submitted that the said credit transactions were made by the Noticee himself, his friends and relatives. In this regard the Noticees have identified certain credit entries in the Andhra Bank account statement, involving an amount of Rs. 9,80,000/-, which have been sent by self, friends and relatives. The Noticees have also claimed to have refunded Rs. 2,58,382/- to a complainant.
14. In support of his claims, the Noticees have submitted 17 affidavits from the persons mentioned at para 7 above, deposing to the effect that amounts transferred by them to the Andhra Bank account of the Noticees were not towards any fees for advisory service. Such amount mentioned in these affidavits is total Rs. 8,58,600/- . I also note that the Noticees in their appeal memo filed before Hon'ble SAT had provided copies of emails from three persons who, as claimed by the Noticees, were friends of the Noticees and had deposited a total of Rs. 1,21,400/- in the Andhra Bank account of the Noticees. In these emails also, it has been stated that the said amount of Rs. 1,21,400/- transferred by them to the Noticees is for some personal reasons and not towards any advisory fees.
15. Based on the details of fund transfers provided in the said affidavits and the extract of bank statement of Ms. Divya Gupta and that of ICICI Bank Account number 237101504095, claimed to be belonging to Shri Avinsh Mandloi, the credits seen in the statement of the Andhra Bank account of the Noticees were perused. Cross referencing the amount, date and name of the depositor as mentioned in the said affidavits with bank account statement of the Andhra Bank account of the Noticees, it was observed that the narration for the said transactions appearing in the bank statement indicate that the said amounts were received from the person named in the affidavit and the total of such credits is Rs. 8,58,600. Further, cross referencing the dates, amount and name of the depositors as per the emails submitted by the Noticees in their appeal memo before Hon'ble SAT with bank account statement

of the Noticees, it was observed that the narration for the said transactions indicate that the said amounts were received from the person named in the email and the total of such credits is Rs. 1,21,400/-.

16. I note that in the Final Order, in absence of any contention from the Noticees regarding the quantum of fee, the total amount credits received in the Andhra Bank account of the Noticees to the tune of Rs. 19,50,832, was treated as advisory fees received by the Noticee. However, in view of the submissions made by the Noticees in their appeal before the Hon'ble SAT, submissions made before me in these proceedings and documents/evidence produced, it can be inferred that a total amount of Rs. 9,80,000/- was received by the Noticees from self, relatives and friends and is not advisory fees for unregistered investment advisory activity. Therefore, the actual amount received by the Noticees towards fees for unregistered advisory services comes to Rs. 9,70,832/- (i.e. Rs. 19,50,832/- less Rs. 9,80,000/-).

17. I note that the Noticees have submitted that they have made refund of advisory fees of Rs. 2,58,382/- to one complainant. Further, the Noticees have also submitted that they have made few refunds in the form of cash, the details of which is not available with Noticees. In this regard, I note that the present proceedings are only to determine the actual amount that was received by the Noticees towards advisory services. I note that in terms of the Final Order, the Noticees were *inter alia* directed to refund the money received from clients/complainants/investors as fee or consideration or in any other form towards the advisory services provided by the Noticees. The Noticees were also directed to file a report, duly certified by an independent Chartered Accountant, detailing the amount refunded. In view of the above, the Noticees are at liberty to provide necessary proof in support of their abovementioned refund claims to the independent Chartered Accountant and the same may be considered by the independent Chartered Accountant while certifying the refunds made by the Noticees.

18. In view of the aforesaid, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992 read with Section 19 thereof, hereby direct that the amount of refund in terms of Para 28(a) of the Final Order shall be Rs. 9,70,832/-. Except the amount to be refunded, as modified by this order, all other directions given in the Final Order remain unchanged.
19. The direction given in para 18 above does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.
20. This order comes into force with immediate effect.
21. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: April 28, 2023

Place: Mumbai