

WTM/AB/WRO/WRO/ 25 /2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11, 11B and 11D of the Securities and Exchange Board of India Act, 1992 and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

S. No.	Name of the Noticee	SEBI Registration No.	PAN
1.	Chetan Yashwant Shukla	INH000001402	ABBPS2467H

In the matter of unregistered investment advisory services.

1. Present proceedings have emanated from an ex-parte interim order cum show cause notice dated August 04, 2020 (hereinafter referred to as "**the interim order**") passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against Shri Chetan Yashwant Shukla (hereinafter referred to as "**the Noticee**") for *prima facie*, violation of provisions of Sections 12(1) and 12A (a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**"), Regulations 3 (a), (b), (c), (d) and Regulations 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, 2003**"), and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations, 2013**"). The interim order came to be issued against the Noticee as the various representations made/ services offered by the Noticee in securities market were *prima facie* found to be as a fraudulent practice/ act/ conduct and investment advisory plans floated by the Noticee were *prima facie* found to be as unregistered investment advisory activity in terms of the provisions of SEBI Act, 1992 and IA Regulations.
2. In the interim order following directions were issued against the Noticee:

“.....31. In view of the above, pending detailed investigation, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11, 11(4), 11B and 11D read with Section 19 of the SEBI Act, 1992 and Regulation 35, Chapter VI of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby issue by way of this interim ex-parte order, the following directions:

I. Chetan Shukla is directed:

- i. To cease and desist from acting as an investment advisor and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any manner whatsoever until further orders;
- ii. To not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, till further orders;
- iii. To not to associate or work with any intermediary, listed entities in the securities market in any manner whatsoever;
- iv. To provide a full inventory of all assets, whether movable or immovable, (or any interest or investment or charge on any of such assets), including details of all bank accounts, demat accounts and mutual fund investments, immediately;

To not to dispose of or alienate any assets, whether movable or immovable, (or any interest or investment or charge on any of such assets), including moneys lying in any bank accounts except with the prior permission of SEBI.

vi. Not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.

II. immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to their investment advisory and or any other unregistered activity in the securities market.

III. If Chetan Shukla has any open positions in any exchange traded derivative contracts, as on the date of the order, he 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. Chetan Shukla 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.

IV. The Depositories are directed to ensure that till further directions no debits and credits are made in the demat accounts of Chetan Shukla.

V. The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Fund units, held in the name of Chetan Shukla, are not transferred or redeemed.”

3. The interim order also called upon the Noticee to show cause as to why, -

- (i) the various representations made/ services offered by him in securities market may not be treated as a fraudulent practice/ act/ conduct, in terms of PFUTP Regulations, 2003;
- (ii) the investment advisory plans floated by him should not be held as “Investment Advisory Services” in terms of the IA Regulations, 2013 and thereby the activity of the Noticee be treated as unregistered activity under the SEBI Act, 1992 and relevant Regulations;
- (iii) appropriate directions, under Sections 11, 11(4), 11B (1) and 11D of the SEBI Act, 1992 and relevant SEBI Rules/Regulations, including directions -
 - a. to continue the prohibition on them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period,
 - b. to not be associated with any registered intermediary/ listed entity in the securities market, in any manner whatsoever, and
 - c. to refund the amount collected from the investors/clients for its various schemes under Sections 11 and 11B (1) of SEBI Act, 1992,

should not be issued against him.

4. The interim order also mentioned that the Noticee may file his objections, if any, within 21 days from the date of the interim order and, if he so desires, avail himself of an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request to be made in that regard. The interim order was served on the Noticee through courier, on August 19, 2020. The interim order was also sent through email dated August 04, 2020 on email ID Chetanshukla_05@yahoo.co.in, of the Noticee available on record, which bounced back. The interim order was also uploaded on the website of SEBI on August 04, 2020. I note that Noticee has neither

filed any objection/reply to the interim order nor he has sought any opportunity of personal hearing. Thereafter, the file was placed before me on December 18, 2020 for passing of final order in the matter.

5. As the Noticee has neither filed any reply/objection to the interim order nor has he sought any hearing in the matter, I am proceeding in the matter on the basis of the material available on record. The only question for determination before me is whether Noticee is liable for appropriate directions, under Sections 11, 11B (1) and 11D of SEBI Act, 1992, as proposed in the interim order.
6. On a perusal of the allegations levelled against the Noticee in the interim order, and the material available on record, I find that:
 - (a) The Noticee is a Research Analyst (hereinafter referred to as “**RA**”) registered with SEBI and having registration number INH000001402 from August 14, 2015, at the registered address of A- 601, Bhounik Apartment, Ram Lane, Kandivali (West), Mumbai – 400067.
 - (b) Complaints were received against Noticee alleging that he is *inter-alia*, indulged in giving advisory/stock tips, frauds by taking money in lieu of opening Demat account etc.
 - (c) Accordingly, an inspection notice was sent to the Noticee on the registered address and through e-mail dated February 15, 2019, advising him to submit the information for the inspection. Noticee did not submit any information. A site visit was conducted by the inspecting team at the registered address of the Noticee i.e., “A- 601, Bhounik Apartment, Ram Lane, Kandivali (West), Mumbai – 400067” as well as the correspondence address i.e., “126, Xth Central Mall, Mahavir Nagar, Kandivali (West), Mumbai”. From the site visits, it was gathered that the Noticee had shifted from the said premises more than two years ago. As the Noticee had earlier requested for a change in address and principal place of business to Indore, a site visit was conducted at the available addresses viz., Plot No. 17, PU-4, Near Indo Thai, Vijay Nagar, Indore – 452010 and Plot No.56, PU-4, Near Hotel Clif, Vijay Nagar. However, Noticee could not be found at the

address. A site visit was also conducted at the address mentioned in the change of address request viz., Plot No. 17, PU-4, Near Indo Thai, Vijay Nagar, Indore – 452010 on three different days and premises was found locked on all the three occasions.

(d) On examination of the complaints received, SEBI observed that most of the complaints were pertaining to investment advisory services offered by the Noticee through its website viz., www.ways2star.in. Currently, the website is not active however, however, the print outs of the webpages are available on record. An examination of the print outs of the website, as stated in the interim order, revealed following:

a. Under the heading “About us”, the website claimed as follows:

“Ways2star Financial Services is a leading market research company in India, we can advice to your future. Our main focus is on consistently delivering high quality financial products and services to our customers. We have legal entity SEBI Reg. No. INH000001402.”

b. Under the head “Services”, the website stated that it provided the following services:

- i. Basic equity services such as stock cash, stock future, stock option, index services, all equity combo pack.
- ii. Basic MCX Services such as Bullion Services, Energy services, Basic Metal Services, All MCX combo pack and NCDEX Services.
- iii. They also provide premium equity services and Premium MCX services etc.

c. As part of his services for the various segments of the securities market as mentioned above, the Noticee offered multiple packages through the said website. For example, the following package, as shown on the website, under the head “pricing” is reproduced hereunder for reference:

	Basic Services	Premium Services	Golden Services	Golden HNI
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Monthly	9000	16864	26164	32400
Quarterly	28418	45100	68492	87200
Half Yearly	55100	90184	136984	184400
Yearly	92000	178000	313968	388800
2 Yearly	244000	404736	627936	777600

- d. The website i.e. www.ways2star.in also mentioned that it offered Equity Premium Tips-Signature Plan (Combo), Premium Tips- Signature Plan (Combo), etc.
- e. As per the website i.e. www.ways2star.in payment for these services can be done through payment gateway easebuzz.
- f. The website i.e. www.ways2star.in also hosted a detailed risk profiling form for the clients who subscribe to the services offered. It was mentioned that KYC and risk profiling are mandatory for the customers.
- g. As per the interim order the amounts were received in the IndusInd Bank, ICICI Bank and Axis Bank Accounts of the Noticee, the details of which are as under:

IndusInd Bank:

Account no.	Total amount credited (Rs.)	Actual amount credited in Rs.
258169846047 (from 20/04/2019)	96,69,340.00	15,00,000.00
201002562316 (from 05/07/2018 to 14/09/2018)	22,700.00	22,700.00
Total		15,22,700.00

ICICI Bank:

Account no.	Total amount credited (Rs.)	Actual amount credited in Rs
053901511826 From 31/10/2017 to 09/07/2019	1,43,18,762.51	1,43,18,762.51
Total		Rs. 1,43,18,762.51

Axis Bank:

Account No.	Total amount credited (Rs.)	Actual amount credited in Rs.
912010022630556 From 31/10/2017 to 12/10/2019	14,007	14,007
Total		14,007

7. I find that the definition of Investment Adviser, as given in Regulation 2(m) of the IA Regulations, 2013, states that Investment Adviser means “any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called”. Further, Regulation 2(l) of the IA Regulations, 2013 defines Investment Advice as an *“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.”* In light of the aforesaid definitions, I find that the contents of the website of the Noticee i.e. www.ways2star.in (as it then existed) show that the Noticee is holding itself out as an investment adviser, as defined under Regulation 2(m) of IA Regulations, 2013, by offering to provide investment advice, as defined under Regulation 2(l) of IA Regulations, 2013, relating to investing in, purchasing and selling in securities and is also offering multiple investment packages. Further, from statements of various bank accounts of the Noticee which show multiple credit entries together with the contents of the website i.e. www.ways2star.in, the complaints received in the matter and in the absence of any reply of the Noticee explaining these entries, I find that the credit entries in the bank accounts statements of the Noticee pertain to the consideration received by the Noticee in lieu of the investment advice given by the Noticee to his clients. Thus, the Noticee acted as an investment adviser as defined under Regulation 2 (m) of IA Regulations, 2013.
8. I note that the Noticee is an RA. In terms of Regulation 2(1)(u) of SEBI (Research Analysts) Regulations, 2014 (hereinafter referred to as “**RA Regulations, 2014**”), RA means a person who is primarily responsible for- i. preparation or publication of the content of the research report; or ii. providing research report; or iii. making 'buy/sell/hold' recommendation; or iv. giving price target; or v. offering an opinion

concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis. Thus, as per the definition of RA, making of 'buy/sell/hold' recommendation in respect of specific securities is one of the activity for an RA. However, an RA can not give personalised investment advice without complying with IA Regulations, 2013. Therefore, unless a person or an RA holds a valid certificate of registration of as IA, such person/RA cannot render investor specific advice for securities. In the present case, as noted above, the website run by the Noticee, i.e. www.ways2star.in also hosted a detailed risk profiling form for the clients who subscribe to the services offered. It was mentioned that KYC and risk profiling are mandatory for the customers. Risk profiling of an investor is an exercise which is mandated to be undertaken by an RA before giving any advice to investor because an IA is required to assess the risk of an investor before suggesting any financial product/securities to an investor as part of its investment advice. The fact that the Noticee had made the risk profiling mandatory for the investors for availing its services, is another pointer to show that the Noticee was indulged in rendering investment advice without complying with IA Regulations, 2013.

9. In order to ensure that the investors who receive investment advice are protected, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992. Section 12(1) of the SEBI Act, 1992 reads as under:

“12 (1) 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:”

10. Further, as per Regulation 3(1) of the IA Regulations, 2013 the registration of the investment advisers is mandatory. Regulation 3(1) 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”.

11. The activities of the Noticee, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions show that the Noticee is holding itself out and acting as an investment adviser without complying with requirements of IA Regulations, 2013 including seeking of registration with SEBI. Hence, I find that these activities/ representations as being made by the Noticee without holding the certificate of registration as investment adviser is in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.
12. The interim order records that the Noticee does not have a registration with SEBI to provide investment advisory services and has knowingly misrepresented on its website his SEBI Registration for Research Analyst services for doing investment advisory services. In view of this, I find that Noticee has induced investors to deal in securities by misrepresenting himself as an IA and has thus misled the investors.
13. The interim order records that the Noticee on its website had made the following claims:
 - 97% increase in revenue
 - 100% profit increment

I note that the aforesaid claims are active concealment of the material fact 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. In light of the same, the act of the firm to assure returns to the clients is a non-genuine and deceptive act and has been, made with an intent to influence the client to avail its advisory services. RA cannot make promise to give assured returns as investment in securities market are subject to risk associated with the market. Even an IA cannot promise assured returns as per Guidelines for IA issued by SEBI vide circular dated September 23, 2020. Such activities of the Noticee are covered under the definition of “fraud” as given under Regulation 2(1)(c) of the PFUTP Regulations, 2003 and are

thus, fraudulent. Regulation 3(a) of the PFUTP Regulations, 2003 provides that no person shall directly or indirectly buy, sell or otherwise deal in securities in a fraudulent manner. Regulation 3(d) provides that no person shall 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 Act or the rules and the regulations made there under. Regulation 4(1) provides that no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. Regulation 4(2)(k) provides that dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves 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. In view of this, I find that Noticee has violated Section 12A (c) of SEBI Act and Regulations 3 (a) and (d) and 4(1) and 4(2)(k) of PFUTP Regulations, 2003.

14. I note that the material available on record does not indicate the exact amount of fees collected by the Noticee, as a result of providing investment advice to investors, in violation of the provisions of the IA Regulations. However, interim order records that 14 complaints have been received against the Noticee.

15. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4), 11B (1) and 11D, read with of Section 19 of the SEBI Act, 1992 and Regulation 11 of the PFUTP Regulations, and in supersession of the directions in the interim order, hereby direct that:

- a. The Noticee shall within a period of three months, refund the money received from the complainants or investors, as fees/profit sharing/compensation or in any other form, if any, in respect of their unregistered investment advisory activities;
- 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, 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 Order;

- c. The repayments to the clients/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. The Noticee is prevented from selling its/his assets, properties and holding of mutual funds/shares/securities held by it/ him in demat and physical form except for the sole purpose of making the refunds as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/investors who were availing the investment advisory services from the Noticees, as directed in this order, from the bank accounts of the Noticees, wherein debit has been frozen by virtue of interim order dated August 04, 2020;
- e. After completing the aforesaid repayments, the Noticee shall file a report of such completion with SEBI addressed to the Division Chief, CIS Division, Investment Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 15 days, after completion of three months from the coming into force of this order, duly certified by an independent Chartered Accountant;
- f. The above direction for refund does not preclude the complainants/clients/investors to pursue legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service;
- g. The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 3 (three) years from the date of this order or till the expiry of 3 (three) years from the date of completion of refunds to investors as directed in paragraph 15 (a) of this order, whichever is later;

- h. The Noticee is also restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in any capacity for a period of 3 (three) years from the date of this order or till the expiry of 3 (three) years from the date of completion of refunds to investors as directed in paragraph 15(a) of this order, whichever is later;
- i. The Noticee shall not undertake, either during or after the expiry of the period of debarment as mentioned in paragraph 15(g), 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.

16. This order comes into force with immediate effect.

17. A copy of this order shall be sent to the Noticee, 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-

Place: Mumbai

Date: February 26, 2021

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA