

WTM/AB/WRO/WRO/21394/2022-23

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

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

In respect of:

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

In the matter of Unregistered Investment Adviser

1. The present proceedings emanate from a show cause notice dated July 31, 2021 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against Shri Pushpendra Bhalse, in his capacity as the sole proprietor of Heaven Research Security Advisory wherein it was *prima facie* alleged that the Noticees were engaged in investment advisory services without obtaining a certificate of registration from SEBI in violation of the provisions of 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**”). The SCN called upon the Noticees to show cause as to why suitable directions should not be issued against the Noticees under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992.

2. I note that the SCN alleges the following:

- a. SEBI had received a complaint on February 11, 2019, against Heaven Research Security Advisory, a sole proprietorship firm (hereinafter referred to

as “**Heaven Research**”) and its proprietor Shri Pushpendra Bhalse (Shri Pushpendra Bhalse and Heaven Research are hereinafter collectively referred to as the “**Noticees**”). In the complaint, it was, *inter alia*, alleged that the Noticees fraudulently promised a return of Rs. 14,50,000 and took Rs. 2,58,382 as service charges from the complainant. Thereafter, Noticees caused the loss of Rs. 80,000 to Rs, 1,00,000 in the demat account of the complainant. The complainant also provided the screenshot of WhatsApp chat and Easebuzz payment receipt wherein payment was made to the Noticees.

- b. The website of Heaven Research i.e. www.heavenresearch.co.in was not active as on the date of SCN. From the archived pages of the said website, downloaded from web.archive.org, it was observed that the following was disclosed on the website:

“Heaven Research is one of the leading stock advisory firm in stock and commodity market. Or strong hold in providing the most accurate tips makes us stand apart from our competitors.”

“With our specialization and deep research we provide tips in Indian share market like stock tips, commodity tips, intraday tips, equity tips, Nifty future tips, stock future tips and premium services in all segments. We are dedicated at working with just one goal which is to make high profit for our customers with our deep technical and fundamental analysis.

- c. Payment details as available from the archived website is as under –

*Andhra Bank Ltd.
A/c name: Heaven Research
A/c No. 275011100000566
Branch: Geeta Bhavan*

- d. As per the archived webpages of the website www.heavenresearch.co.in, Heaven Research offered various services which are *inter alia* tabulated as under:

Sr. No.	Category of Service
1.	<i>Basic Cash</i>
2.	<i>Basic Future</i>
3.	<i>Basic Option</i>
4.	<i>Premium Cash</i>
5.	<i>Premium Future</i>

6.	Premium Option
7.	HNI Cash
8.	HNI Future
9.	HNI Option
10.	Energy
11.	Base Metal
12.	Bullions
13.	Points Commitment Plan
14.	Index
15.	BTST/STBT

- e. The complainant had made payment to the Noticees through Eazebuzz. The details of account as provided by Eazebuzz, through email dated January 22, 2020 are as follows:

Name	Heaven Research
Email	charlie.prince.prince@gmail.com
Contact Number	8818885747
Bank Name	Andhra Bank Ltd.
Bank Info	Heaven Research Security Advisory
IFSC Code	ANDB0002750
Account Number	275011100000566
Business Name	Pushpendra Kumar Bhalse
PAN ID	BFFPB3552K
State	Madhya Pradesh
Organization	Proprietorship firm

- f. From the analysis of statements of Noticees' Eazebuzz account for the period October 11, 2018 to October 21, 2019, it was observed that an amount of Rs. 2,51,674/- from the complainant has been credited to the aforesaid Eazebuzz account of the Noticees.
- g. Based on the information submitted by the Eazebuzz and details available on the website www.heavenresearch.co.in, details of bank account of Heaven Research held with Andhra Bank were sought. From the analysis of KYC, Account Opening Form and account statement provided by the Andhra Bank, it was noted that Shri Pushpendra Bhalse is the sole Proprietor of Heaven Research. The bank account was opened on November 21, 2016 and total amount credited in the said bank account from November 21, 2016 to November 11, 2019 was Rs. 19,50,832.

- h. The complainant alleged that he had received investment advisory services from the Noticees and made payments to the Noticees for providing the services. Further, the website www.heavenresearch.co.in disclosed that it was providing investment advisory services and the payment tab of website also disclosed payment details of Andhra Bank accounts, which is linked to the Easebuzz account of Noticees, wherein money paid by the complainant and others had been received. Hence, it was inferred that the above mentioned bank accounts were used for receipt of fees from various entities for the purpose of providing advisory services.
 - i. It was further observed that the Noticees were engaged in the activities of 'investment adviser' as defined under Regulation 2(1)(m) of the IA Regulations, 2013. It was therefore alleged that the Noticees were engaged in providing unregistered investment advisory services without obtaining registration from SEBI as required under Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of IA Regulations, 2013 thereby violating the said provisions of the SEBI Act, 1992 and the IA Regulations, 2013.
 - j. The SCN had thus 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. The SCN was issued to the addresses of the Noticees by Speed Post. The SCN was delivered to two addresses of the Noticees. However, no reply was received from the Noticees. In view of the same, the matter was placed before me on February 24, 2022 for granting personal hearing to the Noticees. The Noticees were granted an opportunity for personal hearing on May 20, 2022. The Noticees filed a reply dated April 26, 2022 in the matter. Thereafter, on the scheduled date of hearing, the Authorized Representatives (AR) of the Noticees appeared before me and made submissions on behalf of the Noticees, reiterating the submissions made in the reply. The submissions of the Noticees, *inter alia*, are as follows:

- a. The complaint pertains to 2019 and the SCN has been issued with an unexplained delay of 2 years. Further, it is not shown when the complainant made the payment which raises serious doubts on the complainant.
- b. Heaven Research was owned and controlled by Shri Avinash Jain. Shri Pushpendra Bhalse worked with Heaven Research as HR Manager from September 2016 to November 2019. Shri Pushpendra Bhalse cannot be held liable for any acts of Shri Avinash Jain and in this case he is a victim of acts committed by Shri Avinash Jain.
- c. Shri Pushpendra Bhalse provided KYC details and signed some blank account opening form for the purpose of opening salary account but to his knowledge, the said account was never opened. Shri Avinash Jain has misused the documents of Shri Pushpendra Bhalse. The Noticees have also denied any knowledge of the account held with Andhra Bank and Easebuzz.
- d. The complainant has not named Shri Pushpendra Bhalse and named other executives of Heaven Research, who were working under the control and command of Shri Avinash Jain.
- e. The details of the website are taken from web.archive.org, which is a third party website and anybody can make a profile on the website. The Noticees have denied any link with the website www.heavenresearch.co.in.
- f. Shri Pushpendra Bhalse never had any contact with the complainant and never represented Heaven Research to the complainant. However, as the complainant was cheated by Shri Avinash Jain, Shri Pushpendra Bhalse approached the complainant and made a refund of the said amounts and is willing to make further refunds, if any are claimed by an innocent citizen, after verification of payments receipts.
- g. In terms of SEBI regulations, Investment Advice is an advice which shall necessarily include financial planning. There is no allegation in the SCN that

the Noticees were conducting financial planning. The business of Heaven Research falls under the category of Research Analyst and not Investment Adviser.

Consideration of submissions and findings:

4. I have considered the allegations made in the SCN along with the findings of the examination by SEBI stated therein, reply received in the matter and submissions made by the Noticees during the personal hearing.

5. At the outset, I note that the Noticees have submitted that the proceedings suffer from unexplained delay. The Noticees have further submitted that it has not been shown as to when did the complainant made the payment, which raises serious doubts on the complainant. In this regard, I note that the complaint was received from the complainant on February 11, 2019. The complainant had also submitted screenshots of the WhatsApp chat held with the representative of Heaven Research and the screenshots of the payments made through Easebuzz. Investigation into the matter involved seeking relevant information from the service providers and Banks, analysis of transaction and account details received from Easebuzz and Andhra Bank, analysis of fund transfer transactions, analysis of the contents of the website, etc. The investigation in the matter could be completed on February 28, 2020. The matter was then processed through the internal approval process of SEBI. I also note that this was a period which saw frequent lockdowns in the wake of COVID-19 pandemic when various workplaces including SEBI offices were functioning with minimum allowed staff strength. The SCN in the matter was issued on July 31, 2021. The SCN was served upon the Noticees through speed post, however, no reply was received from the Noticees. Thereafter, the file was placed before me on February 24, 2022 for granting a hearing to the Noticees. Personal hearing in the matter was scheduled for May 20, 2022. The Noticees filed a reply dated April 26, 2022 in the matter which was received in SEBI on April 27, 2022. I note that all supporting documents relied upon in the SCN have been provided to the Noticees. Therefore, I do not agree with the contention made by the Noticees that there was delay in issuance of SCN to the Noticees. Further,

I note that in their reply the Noticees have not pointed out specifically as to how the purported delay, if any, has prejudiced the Noticees in putting their defence. I also note that the Noticees have not stated as to what record/document/evidence that could not be accessed by them because of the purported delay in the matter. In view of the above facts, I find that no prejudice has been caused to the Noticees due to the purported delay in the issue of SCN nor have the Noticees been able to make out a case about any prejudice due to the purported delay in the issue of SCN. Thus, I find that the contention of alleged delay in the issuance of SCN, is not sustainable in the facts and circumstances of the present case.

6. The Noticees have further submitted that it has not been shown in the SCN as to when the complainant made the payment and this, according to the Noticees, raises serious doubts on the complainant. In this regard, I note that the transaction statement received from Easebuzz, through which the complainant made the payment, was annexed to the SCN. I note that in the said transaction statement, the name of the complainant has been clearly mentioned in five instances along with respective dates of fund transfers. Therefore, I do not agree with the contention made by the Noticees that the details of payments made by the complainant were not provided in the SCN. I also note that in their reply, the Noticees have submitted that the Noticees approached the complainant and claimed to have made a refund of the said amount to the complainant. This submission shows that previous contention of the Noticees regarding the veracity of the complainant is not correct. Further, I note that making of claimed refund by the Noticees to the complainant does not wipe out the violation of the provisions of securities laws, as alleged in the SCN.
7. The Noticees have also contended that the details of the website are taken from archive.org, which is a third party website and anybody can make a profile on the website. In this regard, I note that web.archive.org is an archive of internet sites as existing at a particular time, it allows the user to see how a particular website looked in the past. It does not allow creation of 'profiles', which can be created by anyone as contended by the Noticees. Further, Noticees have failed to explain as to why some other person will float a website offering investment advisory services and

give the bank account details of the Noticees for depositing fees for such service. In view of the above, I do not agree with the contention raised by the Noticees that such webpages may have been made by any other person.

8. The Noticees have further contended that
 - a. Heaven Research was owned and controlled by one Avinash Jain and Shri Pushpendra Bhalse was only an employee of Heaven Research. Shri Pushpendra Bhalse was hired by Shri Avinash Jain in September 2016 and he submitted his ID, address proof, Aadhaar card and PAN card details and signed some blank account opening form for the purposes of opening salary account but to his knowledge the said accounts were never opened. Shri Pushpendra Bhalse has no idea how the bank account was opened and also linked with Easebuzz using his name and documents and alleged that Shri Avinash Jain has misused the documents submitted by Shri Pushpendra Bhalse. Shri Pushpendra Bhalse left the job in November 2019.
 - b. The complainant has not named Shri Pushpendra Bhalse and named other executives of Heaven Research, who were working under the control and command of Shri Avinash Jain.
 - c. Shri Pushpendra Bhalse never had any contact with the complainant and never represented Heaven Research to the complainant. As the complainant has been cheated by Shri Avinash Jain, Shri Pushpendra Bhalse approached the complainant and made a refund of the said amounts and is willing to make further refunds, if any are claimed by an innocent citizen after verification of payments receipts.
9. In this regard, I note that while Shri Pushpendra Bhalse has claimed that the owner of Heaven Research is Shri Avinash Jain and that he was merely an employee of Heaven Research, he has not submitted any documents/proof like salary slip, ID card copy, bank statement showing credit of salary etc. in support of his claims. Therefore, in absence of any evidence in support of his claims, I am not inclined to accept the claims made by Shri Pushpendra Bhalse in this regard.

10. Further, with respect to the Noticees' contention that Shri Pushpendra Bhalse was not the owner of Heaven Research and that he had no knowledge of how his details and documents were used to open the bank account, I note that the SCN contains clinching evidence which directly contradicts the contentions made by the Noticees in this regard. From the SCN, I observe that:

- a. The payment screenshots provided by the complainant along with his complaint show that funds to the tune of Rs. 2,58,382 were transferred by the complainant to the Noticees through Easebuzz. The transaction statements of Noticees' Easebuzz account, received from Easebuzz, shows credits corresponding to the payments made by the complainant. In fact, the name of the complainant has also been mentioned in the transaction statement in five instances. Therefore, it is clear that the fund transfers made by the complainant were credited to the Noticees' account.
- b. Easebuzz has also provided the following details pertaining to the beneficiary of the merchant account:

<i>Name</i>	<i>Heaven Research</i>
<i>Email</i>	<i>charlie.prince.prince@gmail.com</i>
<i>Contact Number</i>	<i>8818885747</i>
<i>Bank Name</i>	<i>Andhra Bank Ltd.</i>
<i>Bank Info</i>	<i>Heaven Research Security Advisory</i>
<i>IFSC Code</i>	<i>ANDB0002750</i>
<i>Account Number</i>	<i>275011100000566</i>
<i>Business Name</i>	<i>Pushpendra Kumar Bhalse</i>
<i>PAN ID</i>	<i>BFFPB3552K</i>
<i>State</i>	<i>Madhya Pradesh</i>
<i>Organization</i>	<i>Proprietorship firm</i>

- c. As confirmed by Easebuzz, Heaven Research is the beneficiary of the merchant account held with Easebuzz to which payments have been made by the complainant. Easebuzz has also confirmed the details of the bank account (a/c no. 275011100000566) in the name of Heaven Research held with Andhra Bank which was linked with the Easebuzz account and to which the payments received in the Noticees' Easebuzz account were ultimately credited.

- d. The KYC details of the bank account in the name of Heaven Research (a/c no. 275011100000566) held with Andhra Bank shows that Shri Pushendra Bhalse is the proprietor of Heaven Research and the beneficiary of the said bank account. The KYC details provided at the time of account opening also matches with that of Shri Pushendra Bhalse.
- e. The transaction statement of Andhra Bank account (a/c no. 275011100000566) shows credits corresponding to the transactions made in the Heaven Research's Easebuz account. Therefore, it is clear that the funds transferred by the complainant to Heaven Research through Easebuzz were ultimately credited to Heaven Research's bank account held with Andhra Bank.
- f. The transaction statements of Heaven Research's bank account held with Andhra Bank also shows several debit and credit transactions with the narration including Shri Pushendra Bhalse's name, which shows that the account was being used by Shri Puspendra Bhalse to transfer funds to and from his other bank accounts.
- g. The complainant had also provided screenshots of WhatsApp chat wherein the contact details of Heaven Research were mentioned which *inter alia* include the email *info@heavenresearch.co.in*. The domain name of the email id is *heavenresearch.co.in*.
- h. At the relevant time during investigation, the website *www.heavenresearch.co.in* was found to be not active. However, from the archived pages of the said website, as accessed from *archive.org* on February 04, 2020, the following payment details were noted:

Andhra Bank Ltd.

A/c name: Heaven Research

A/c no. 275011100000566

Branch: Geeta Bhavan

11. I also note that the complainant had provided the details of payments made through Easebuzz, screenshots of the said payments and his bank account statement which shows the corresponding debits in the complainant's account. These documents as provided by the complainant shows that the funds amounting to Rs. 2,58,382 were transferred by him during the period between November 16, 2018 to November 26, 2018 to the accounts of the Noticees. Credit transactions corresponding with the payments made by the complainant and amounting to Rs. 2,51,674 (probably after deduction of charges by Easebuzz) were noticed in the transaction statements of the Noticees as provided by Easebuzz and Andhra Bank, which shows that the payments made by the complainant were credited to the Noticees' bank account. KYC and transaction details of the Noticees' account were sought from Easebuzz and Andhra Bank. The details provided by Easebuzz and Andhra Bank shows that Heaven Research was the beneficiary of the Easebuzz account and the bank account held with Andhra Bank and Shri Pushpendra Bhalse was the sole proprietor of Heaven Research. The mobile number mentioned in the KYC of the both the accounts (Easebuzz and Andhra Bank) was 8818885747. I also note that the complainant had provided the contact details of Heaven Research including email i.e. info@heavenresearch.co.in. The domain name of the email server is heavenresearch.co.in which is same as that of the website www.heavenresearch.co.in. The bank account whose details were mentioned on the website www.heavenresearch.co.in belongs to the Noticees. It is the same account to which funds were transferred by the complainant. Therefore, I find that Shri Pushpendra Bhalse is the beneficiary of the bank account mentioned on the website and to which the funds transferred by the complainant were credited. Further, I note that there were several debit and credit transactions in the bank account held with Andhra Bank where the narration included the name of Shri Pushpendra Bhalse showing that the Noticees had knowledge about the Andhra Bank account and used to transfer funds to the Andhra Bank account and from their other bank accounts. In view of the above, I find that the website www.heavenresearch.co.in was being run by the Noticees and the Andhra Bank account in the name of Heaven Research was being used by the Noticees to receive consideration for the services offered through the website www.heavenresearch.co.in.

12. I also note that in the KYC documents received from Andhra Bank along with the account opening form, a certificate of registration of Heaven Research as sole proprietorship, issued by District Labour Office, Indore, has been provided. The said certificate clearly mentions Shri Pushpendra Bhalse's name as the proprietor of Heaven Research Security Advisory. Shri Pushpendra Bhalse, in his reply has submitted that he was hired in September 2016 by one Avinash Jain, the purported proprietor of Heaven Research according to Shri Pushpendra Bhalse. Even if one were to consider the contention made by Shri Pushpendra Bhalse that he signed some blank form and provided his KYC details to open a bank account in September 2016, it is incredible that the certificate of registration issued by the District Labour Office, Indore, which was issued on August 21, 2015 bears the name, father's name, address and photograph of Shri Pushpendra Bhalse and that such certificate was issued without the knowledge of or any application made by Shri Pushpendra Bhalse. I also note that while Shri Pushpendra Bhalse has alleged that his KYC and other documents submitted by him to Avinash Jain were misused to open the bank account, he has not made any submission or submitted any document/evidence to show that he has taken any action against the said Avinash Jain for such misuse and fraud committed by him. Surprisingly, Shri Pushpendra Bhalse has claimed that he has approached the complainant and refunded the amount due to the complainant, who according to Shri Pushpendra Bhalse was cheated by the said Avinash Jain. Even more surprising is the submission made by Shri Pushpendra Bhalse that he is also willing to refund any other investors, who have been cheated in a similar fashion, provided they are able to provide receipts/transaction ID which can be verified that they have made payments to Heaven Research that too on the pretext of investment advisory. The above mentioned submissions of the Noticees alone leads one to conclude that Shri Pushpendra Bhalse is in fact the proprietor of Heaven Research was running the website i.e. www.heavenresearch.co.in and was also the beneficiary of the bank account in which consideration was being received for the services offered through the website www.heavenresearch.co.in. In view of the above, I find that the contention raised by the Noticees that the complainant had not named Shri Pushpendra Bhalse is of no consequence as it is clear that Shri Puspendra Bhalse

was the sole proprietor of Heaven Research and beneficiary of the bank accounts held in the name of Heaven Research. The Noticees, by alleging that Shri Avinash Jain owned and controlled Heaven Research and opened the bank accounts by misusing the documents submitted by Shri Pushendra Bhalse, have tried to mislead and cover up his role in the alleged violations in order to defeat the present proceedings. In view of the above, I find that the contention made by the Noticees in this regard are untenable.

13. The Noticees have denied the allegation made in the SCN that Heaven Research was providing investor advisory services and running an unregistered investment advisory company. The Noticees have further contended that in terms of SEBI regulations, Investment Advice is an advice which shall necessarily include financial planning and that there is no allegation in the SCN that the Noticees were conducting financial planning. According to the Noticees, the business of Heaven Research falls under the category of Research Analyst and not Investment Adviser.

14. In this regard, I note that the definition of Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013 provides as follows:

“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;”

15. Further, Regulation 2(1)(l) of IA Regulations, 2013 provides as follows:

“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:

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;”

16. A bare reading of the abovementioned provisions of the IA Regulations, 2013 shows that ‘investment advice’ as defined under Section 2(1)(l) of the IA

Regulations, 2013 also include 'financial planning'. However, it does not mean that 'investment advice' must necessarily include financial planning. In other words, definition of investment advice covers 'financial planning' but financial planning is not an essential ingredient of investment advice. Therefore, the contention of the Noticees that 'investment advice' necessarily include financial planning and in absence of any allegation to that effect, the activity of the Noticees cannot be termed as investment advisory services, is not tenable and therefore, liable to be rejected.

17.I note that, in the archived pages of the website www.heavenresearch.co.in, accessed on February 04, 2020, *inter alia* the following was claimed:

"Heaven Research is one of the leading stock advisory firm in stock and commodity market. Or strong hold in providing the most accurate tips makes us stand apart from our competitors."

"With our specialization and deep research we provide tips in Indian share market like stock tips, commodity tips, intraday tips, equity tips, Nifty future tips, stock future tips and premium services in all segments. We are dedicated at working with just one goal which is to make high profit for our customers with our deep technical and fundamental analysis."

18.Further, it is also noted from the archived pages of the website that Heaven Research offered various services which are tabulated as follows:

Sr. No.	Category of Service
1.	Basic Cash
2.	Basic Future
3.	Basic Option
4.	Premium Cash
5.	Premium Future
6.	Premium Option
7.	HNI Cash
8.	HNI Future
9.	HNI Option
10.	Energy
11.	Base Metal
12.	Bullions
13.	Points Commitment Plan
14.	Index
15.	BTST/STBT

19. Further, webpages explaining the aforesaid also described the services that the Noticees were providing.

20. From the above, I note that on the website www.heavenresearch.co.in, it was claimed that Heaven Research is a stock advisory firm in stock and commodity market. The website also claimed to provide *stock tips, commodity tips, intraday tips, equity tips, nifty future tips, stock future tips* etc. I also note that the website offered differentiated services in cash, futures and options segments. The website offered services based on the type of clients i.e. basic, premium and HNI. I note that after each type of service as offered under the 'Our Services' section of the website, a link for 'risk profile' was also provided. In the narration provided for one of services offered on the website viz. *premium pack base metal tips*, as mentioned on 'Our Services' section of the website, it was, *inter alia*, mentioned that '*the pack is for premium clients*'. Therefore, I find that the Noticees used to categorise their clients in different categories based on various parameters and also offered risk profiling to their clients. Based on such categorisation and risk profile of the clients and also on the needs and choices of the clients, the Noticees offered services such as stock tips, commodity tips, intraday tips, Nifty futures tips, stock futures tips, etc. Such differentiated services based on the category and risk profile of the client, being offered through the website www.heavenresearch.co.in falls squarely under the definition of 'investment advice' as provided under Regulation 2(1)(l) of the IA Regulations, 2013.

21. As noted in paragraph 11 above, the website www.heavenresearch.co.in was being run by the Noticees and the consideration for the services offered through the website was being received by the Noticees through the Andhra Bank account. The total credits received in the said Andhra Bank account were Rs. 19,50,832. From the aforesaid facts, I find that Shri Pushendra Bhalse, who is the proprietor of Heaven Research, was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through the website (www.heavenresearch.co.in) of his proprietorship firm Heaven Research, *in lieu* of consideration. I note that if an entity is engaged in providing 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 *in lieu* of consideration, including entities which are holding themselves out as investment advisers, are covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, Rs. 19,50,832/- were received in the Andhra Bank Account No. 275011100000566 in the name of the Noticees during the period November 21, 2016 to November 11, 2019. Hence, I find that the Noticees were engaged in the business of providing investment advice to their clients, for consideration, and thus, acting as investment advisers, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

22. I also note that, it is imperative that any person carrying out investment advisory activities must necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992 and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

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

23. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 have been framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under regulation 3(1) of the IA Regulations, 2013, which, *inter alia*, provides that, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further

safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with networth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

24. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations, 2013:

- 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 recognised 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.

25. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticees were acting as an Investment Adviser, although the Noticees were not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticees without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act, 1992 read with regulation 3(1) of the IA Regulations, 2013.

26. As noted above, Rs. 19,50,832/- were received in the Andhra Bank Account No. 275011100000566 of the Noticees during the period November 21, 2016 to November 11, 2019, *in lieu* of the unregistered investment advisory activities.

27. I also note that in the case of Shri C. Paranitharan and Others and Trend Market Advisory Services, SEBI had passed orders dated July 05, 2022 and July 07, 2022, respectively, *inter alia* directing the Noticees therein to refund the fees or consideration received from investors in respect of their unregistered investment advisory activities. In the respective appeals filed against these orders by the respective Noticees, Hon'ble SAT vide common order dated September 21, 2022 *inter alia* directed the appellants therein to deposit the balance amount after making refunds to investors, with SEBI. It was also directed that the balance amount deposited with SEBI shall be kept in escrow account for a period of one year and be distributed to any claimants and thereafter, the remaining amount, if any, will be deposited in the Investor Protection and Education Fund.

Directions

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.

29. The direction for refund and depositing the balance amount with SEBI, as given in paras 28(a) and 28(e) 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.

30. This order comes into force with immediate effect.

31. 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/-

Date: November 24, 2022

Place: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA