

WTM/AB/IMD/IMD-II CIS/21622/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(1), 11(4), 11B (1), 11D OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Noticee no.	Noticee Name	PAN
1.	Fingravy Wealth Creation Services Pvt. Ltd.	AADCF2427Q
2.	Mr. Dhiraj Gupta	CMVPG2518N
3.	Mr. Sumit Kumar	CSIPK7343G
4.	Mr. Hemanchal Singh	FPBPS3962E
5.	Mr. Ravindra Singh	FOIPS5131B
6.	Mr. Ashutosh Sharma	CBVPS2287K

(The aforesaid entities are hereinafter referred to by their respective names / noticee numbers or collectively as “the Noticees”)

In the matter of Unregistered Investment Advisory by M/s. Fingravy Wealth Creation Services Pvt. Ltd.

1. On the basis of complaints received against Noticee no. 1, Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an examination into the affairs of Noticee no. 1 in relation to the activities of unregistered investment advisory being carried out by it. Thereafter, SEBI passed an *ex-parte ad interim* order dated January 14, 2020 (hereinafter referred to as “**the interim order**”), against the Noticee no. 1 (hereinafter also referred to as “**the Company**” / “**Fingravy**”) and its present and past directors i.e. Noticee no. 2 to 6, wherein the Noticees were *prima facie* found to have violated the provisions of Section 12A (c) and 12 (1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and 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 Advisors) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”). In view of the aforesaid *prima facie* violations by the Noticees, the interim order issued the following directions:

“35. In view of the foregoing, pending conclusion of enquiry, in order to protect the interests of investors and integrity of the securities market, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11B and 11D read with Section 19 of the SEBI Act hereby issue by way of this interim ex-parte order, the following directions:

- a. *M/s. Fingravy Wealth Creation Services Pvt. Ltd. and its present directors namely, Mr. Dhiraj Gupta and Mr. Sumit Kumar, are directed to:*
 - i. *Cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders.*
 - ii. *Not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.*
 - iii. *Not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.*
 - iv. *Immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc., in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.*
- b. *M/s. Fingravy Wealth Creation Services Pvt. Ltd. and its directors (present and past) namely, Mr. Dhiraj Gupta, Mr. Sumit Kumar, Mr. Hemanchal Singh, Mr. Ravindra Singh and Mr. Ashutosh Sharma, are directed to:*
 - a. *Not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders. If Fingravy Wealth Creation Services Pvt. Ltd. and its directors, named in this order, have any open position in any exchange traded derivative contracts, they are permitted to close out/ square off such open positions within one month from the date of receipt/knowledge of this order.*
 - b. *To provide a full inventory of all assets held in their name, 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 but not later than 5 working days from the date of receipt of this order.*
- c. *Any person while working under Fingravy or any of the Directors under its/ their instructions as employee or otherwise, shall cease and desist from undertaking the activity of investment*

advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.

- d. Banks, including Axis Bank, ICICI Bank and HDFC Bank, wherein Fingravy is holding bank accounts, are directed not to allow any debits/ withdrawals from and credits to the said accounts, without the permission of SEBI. The Banks are directed to ensure that all the above directions are strictly enforced.*
- e. Banks wherein the directors of Fingravy, both present and past, namely, Mr. Dhiraj Gupta, Mr. Sumit Kumar, Mr. Hemanchal Singh, Mr. Ravindra Singh and Mr. Ashutosh Sharma are holding bank accounts, are directed not to allow any debits/ withdrawals from the said accounts, without the permission of SEBI. The Banks are directed to ensure that all the above directions are strictly enforced.*
- f. The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of Fingravy and its directors (present and past) namely, Mr. Dhiraj Gupta, Mr. Sumit Kumar, Mr. Hemanchal Singh, Mr. Ravindra Singh and Mr. Ashutosh Sharma, held jointly or severally.*
- g. 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 Fingravy and its directors (present and past) namely, Mr. Dhiraj Gupta, Mr. Sumit Kumar, Mr. Hemanchal Singh, Mr. Ravindra Singh and Mr. Ashutosh Sharma, jointly or severally, are not transferred or redeemed.*

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2. The interim order was also in the nature of a show cause notice, wherein the Noticees were called upon to show cause as to why the various representations made/ services offered by Noticee no. 1 in securities market may not be treated as a fraudulent practice/ act/ conduct, in terms of PFUTP Regulations, 2003, why the investment advisory plans floated by them should not be held as “Investment Advisory Services” in terms of the IA Regulations, 2013 and thereby their activity be treated as unregistered activity under the SEBI Act, 1992 and relevant Regulations. The Noticees were also show caused as to why appropriate directions, under Sections 11, 11(4), 11B and 11D of the SEBI Act, 1992 and relevant SEBI Rules/Regulations, including directions 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, directions to not be associated with any registered intermediary/ listed entity in the securities market, in any manner whatsoever, and why any direction to refund the amount collected from the investors/clients for its various schemes under Sections 11 and 11B of SEBI Act, 1992 should not be issued against them.

3. Service of the interim order was completed upon Noticee no. 1 by affixture at its registered office address at Mumbai. The interim order was served upon Noticee no. 2 by Speed Post. Service of the interim order was completed upon Noticee no. 3, 4, 5 and 6 by email dated August 19, 2020 and reminder email dated August 26, 2020. The Noticee no. 2 filed his replies dated February 25, 2020 and January 8, 2022. Noticee no. 1 has filed a reply dated March 3, 2020. The said reply was signed by Noticee no. 2 and 3, on behalf of Noticee no. 1. The said reply was also supported by a certified copy of the board resolution passed in the meeting of the board of Noticee no. 1, held on March 3, 2020, authorizing Noticee no. 2 and 3 to sign all necessary documents and represent the case of Noticee no. 1 before SEBI. The reply filed by Noticee no. 1 claimed that the said reply was being filed on behalf of itself and its past and present directors. The said reply states that the board of directors of Noticee no. 1 in their meeting held on March 3, 2020, had resolved to authorize Noticee no.2 and 3, to file the reply and to represent the case before SEBI, on behalf of the Company and its past and present directors. Noticee no. 1 was advised to file independent authorization letter from each of the directors that it claims to represent. However, no response was received from Noticee no. 1. It is noted that no separate reply has been filed by Noticee no. 3, 4, 5 and 6. Thus, in the interest of justice, though no separate reply has been filed by Noticee no. 3, 4, 5 and 6, I proceed to treat the reply filed by Noticee no. 1, as reply by Noticee no. 3, 4, 5 and 6, also.
4. An opportunity of personal hearing was granted to all the Noticees on September 30, 2021. On the scheduled date of hearing, Noticee no. 3, appeared alongwith his authorized representative and made submissions on behalf of himself and Noticee no. 1, 4 and 5. He filed an authorization letter dated September 29, 2021 written on the letter head of Noticee no.1, whereby Noticee no. 3 was claimed to have been authorized by Noticee no. 1, who in turn had nominated Mr. Ranvijay Chaudhary, PCS and Advocate Nikhil Verma, to represent the case of the Company and its directors before SEBI. Noticee no. 3 also filed a certified copy of the board resolution passed in the meeting of the board of Noticee no. 1 held on September 28, 2022, wherein the board had authorized Noticee no. 3 to take all necessary steps to represent its case before SEBI. I note that none appeared for Noticee no. 2 and 6 at the hearing held on September 29, 2021.

5. Another opportunity of personal hearing was granted to Noticee no. 2 and 6 on January 14, 2021. On the said date, none appeared for Noticee no. 6. Vide email dated January 08, 2022, Advocate Mr. Rajendu Singh filed reply on behalf of Noticee No. 2 along with copy of authorization letter from the Noticee No. 2 to appear for the personal hearing. Another email dated January 12, 2022, was received from fingravy@gmail.com enclosing a board resolution dated January 06, 2022 of Noticee No. 1 and authorization letter dated January 06, 2022. The authorization letter dated January 06, 2022, authorized Mr. Ranvijay Chaudhary, PCS and Adv. Mr. Nikhil Kumar Verma to represent and appear for the personal hearing on behalf of Noticee No. 2. During the hearing on January 14, 2021, both the authorized representatives i.e. Advocate Mr. Rajendu Singh and Advocate Mr. Nikhil Kumar Verma, claiming to represent Noticee no. 2, appeared. On being asked as to how can there be two authorized representatives, Advocate Mr. Nikhil Kumar Verma enquired and submitted that the Noticee No. 2 has authorized both the advocates. Advocate Mr. Nikhil Kumar Verma allowed the Advocate Mr. Rajendu Singh to argue and make the submissions and submit that he would stand by the submissions made by Advocate Mr. Rajendu Singh, on behalf of Noticee No. 2. On the said date of hearing, none appeared for Noticee no. 6.
6. Another opportunity of personal hearing was granted to Noticee no. 6 on April 4, 2022. Noticee no. 6 filed an Authorization Letter dated April 3, 2022, written to SEBI on the letter head of Noticee no.1, wherein Noticee no. 6 nominated Mr. Ranvijay Chaudhary, PCS and Adv. Nikhil Verma, to represent the case of the company and its directors before SEBI. On the said date, Advocate Nikhil Kumar Verma, appeared on behalf of Noticee no. 6 and made submissions.

Consideration of Issues and findings thereon:

7. As per the copy of the screenshot of website, www.fingravy.com, available on record, it is noted that the website is run under a brand name called 'Fingravy Strategic', which was established in 2008 by Mr. Ashutosh Sharma. As on date the website is inactive. Fingravy Strategic also has a presence on Facebook.

8. The interim order records that while presently the website does not have the option of 'Payment' on its home page, from the past records of the website obtained from www.archive.org, it can be seen that the entity accepted payment through payment gateway "Avantgarde", which accepts payments via debit/ credit cards, net banking and wallets, if a client wishes to subscribe to their 'advisory services'. Further, from the copy of the screenshot of the website, it is noted that the following bank accounts are mentioned on its website for clients who wish to make offline payment:

Bank	Account No/ Account type	IFSC Code	Brach Code (Branch Name)
HDFC Bank	50200028467394 (Current)	HDFC0001240	452240005 (Race Course Road)
Axis Bank	917020083741307 (Current)	UTIB0003633	452211027 (Pardeshipura)
ICICI Bank	091605001648 (Current)	ICIC0000916	452229004 (Ratlam Kothi)

9. SEBI's examination found that the above mentioned bank accounts are in the name of an entity, Fingravy Wealth Creation Services Pvt. Ltd., which is registered as a private limited company with the Registrar of Companies, Mumbai.
10. The interim order had made the following observations in respect of Noticee no. 1 and its activities:

".....

- a. As per the information gathered from the website of Fingravy, the following claims are noted:
- Of the 18,000 financial advisers in India, we are part of a select group of under 90 who can call themselves truly independent. We provide strategic financial advice where your needs are the only factors that influence our decisions.*
 - As an independent advisor, we do not have a vested interest in specific products or services that can bias our judgment or recommendations.*
 - Our services range from Indian Stock Market Advisory, Intraday Tips, Stock Trading Tips, Share Market Tips, Super Power Tips, Growing Wealth, Tax Planning, Investment Planning and Strategy, etc.*

- iv. As part of our services for the Equity Market, we have various packages for Intraday Cash, HNI Cash, Delivery Pack, Stock Cash BTST, Cash Blue Chip, etc., at various price points.

Illustration of few of the subscription package provided by Fingravy and the fees for the same are as under:

Intraday Cash	Fees (in Rs.)
Monthly	7,500/-
Quarterly	20,000/-
Half yearly	35,000/-
Yearly	50,000/-

HNI Cash	Fees (in Rs.)
Monthly	20,000/-
Quarterly	45,000/-
Half yearly	80,000/-
Yearly	1,00,000/-

Commodity Bullion	Fees (in Rs.)
Monthly	10,000/-
Quarterly	27,000/-
Half yearly	50,000/-
Yearly	90,000/-

- b. Further, as per the website of Fingravy, it was observed that they charge advisory fee which ranges from:

Initial planning Fee	Monthly Retainer Fee
Rs 50,000- Rs 3,00,000	Rs. 50,000- Rs. 1,50,000

On the website, it is mentioned that the fee includes 2-3 meeting, ongoing review, annual comprehensive review, and anytime access for questions as they arise. Further, it is also stated that cost of planning will depend on its scope:

- Financial Advice/Analysis (minimum charge) : Rs 50,000
- Retirement Planning “Mini- Strategies” : Rs 75,000- Rs 1,50,000

- Comprehensive Financial Plan : Rs 1,75,000 – Rs 2,50,000
 - Hourly Rate for advance planning or consulting : Rs 2,360 (incl. GST)
- c. From archived webpages of the website, it is noted that Fingravy has also placed track sheets for segments of Equity Cash, MCX, Stock Future and Stock Options on its website. These track sheets appear to be, *prima facie*, an indicator of the performance of the investment advice given by Fingravy.
- d. From the complaint of Mr. Ravindra Shelke, the following details are observed:
- Payment receipts are issued by Fingravy to the complainant wherein it is mentioned that the Service Type is 'Equity' and the Risk Profile has been mentioned as 'High'.
 - Payment receipts contain disclaimers/ directions, such as, investment in securities market are subject to market risk, services will be rendered only after KYC and risk profiling is done, client is required to trade on minimum 2 lots and maximum 3 lots on each and every call, etc.

The above terminology and disclaimers/ directions mentioned on the payment receipts are generally associated with entities engaging in providing investment advisory services.

- e. Further, I note the following information gathered from the KYC documents and bank account statements collected from the banks viz., ICICI Bank, Axis Bank and HDFC Bank:
- i. The mailing address given at the time of account opening is 510, Shagun Tower Vijay Nagar, Indore, while the registered office address is Shop No:-168,Citi Mall, C.T.S no. 621, Oshiwara, New Link Road Andheri West, Mumbai, 400058.
- ii. As per the KYC documents of these bank accounts, the nature of business/ type of profession of Fingravy has been stated to be as follows:

Bank	Nature of business/ Type of profession
ICICI Bank	Wealth Creation Services
Axis Bank	Service Providers (Personal Financial Advisors)
HDFC Bank	Service Providers (Financial Consultancy)

- iii. The transactions observed in the above mentioned bank accounts are summarized as under:

Bank	Account Opening Date	Credits received from date of account opening till December 25, 2019	Balance (as on December 25, 2019)	Last Credit Transaction Date
ICICI Bank	January 10, 2018	Rs. 3,58,67,382.13/-	Rs. 976.93/-	Sept 18, 2019
Axis Bank	December 16, 2017	Rs. 40,19,856.3/-	Nil	Jul 29, 2019
HDFC Bank	December 13, 2017	Rs. 2,14,46,708.36/-	Rs. 1,290.74/-	Aug 23, 2019
Total		Rs. 6,13,33,946.79/-		

iv. It is observed that there are large number of payments received through various payment gateways/ IMPS or NEFT. From the narrative of the transactions, it appears that the payments have, *prima facie*, come from various individuals.

v. The credit transactions in the bank accounts, *prima facie*, are proceeds from the business operations of Fingravy and considering that it is showing multiple advisory services as its business operation in its website, it leads to the, *prima facie*, conclusion that the said proceeds are consideration for their advisory services.”

11. After perusing through the observations in the interim order and the material available on record such as copy of KYC documents of bank, copy of screenshot of website www.fingravy.com, copy of payment receipts issued to the complainants, etc., I find that Noticee no. 1 is an investment advisory firm that provides tips for the stock and commodity markets for consideration, and offers services in the area of investment planning and strategy for consideration. I note that at one place, the website of Noticee no. 1 also mentions the words ‘Tax Planning’, but after perusal of the entire sentence, it is evident that the phrase ‘tax planning’ is mentioned merely as a running reference, without any substantive elaboration. The overall content of the website of Noticee no. 1 is designed keeping in view, its role as an ‘Investment Advisor’.

12. 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. 3,58,67,382.13/-, Rs.40,19,856.30/- and Rs.2,14,46,708.36/- (Total - Rs. 6,13,33,946.79/-) were received in three bank accounts mentioned on the website www.fingravy.com. I note that all the three bank accounts were held in the name of Noticee no. 1. I note that the Noticees have failed to explain the source of these credit entries with the help of adequate proof. Thus, I am inclined to hold that the funds credited in these bank accounts which were mentioned on the website www.fingravy.com, emanated from the unregistered investment advisory services being offered by Noticee no. 1. Hence, I find that Noticee no. 1 was 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.

13. I 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.”

14. 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 has 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 net-worth 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.

15.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:

- (i) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 alongwith requisite non-refundable application fee;
- (ii) 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:
 - a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a 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;

- b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
 - c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.
- (iii) Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

16. The activities engaged in by the Noticee no. 1, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticee no. 1 was acting as an Investment Adviser, although the Noticee was not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticee no. 1 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. I note that, the interim order has observed that the website of Noticee no. 1 till as early as May 2019, was displaying the SEBI Registration No. of INZ000176037, while subsequently, it was mentioned on their website that they have applied for a license from SEBI; however, it is observed from the records of SEBI that Noticee no. 1 is neither registered with SEBI in any capacity nor has it applied for registration as an Investment Adviser with SEBI. The interim order also observed that Registration No. of INZ000176037, in fact, belongs to SEBI Registered Stock broker, viz., Finvasia Securities Private Limited. In view of the above, I find that Noticee no. 1 has misrepresented to the general public that (a) it was registered with SEBI (by displaying the registration

number of another intermediary) and (b) it has applied for a license from SEBI, knowing fully that they don't have any registration from SEBI. Through this misrepresentation, Noticee no. 1 has further concealed the truth that they are not authorized to deal in securities market as it does not have the certificate of registration and are defrauding the public by luring/ inducing to avail their services to deal in securities. Such misrepresentation is therefore, fraudulent and is covered within the definition of "fraud" defined under Regulation 2(1)(c) of the PFUTP Regulations, 2003 I, therefore, find the conduct/ act/ practice of Noticee no. 1 to be in violation of provisions of Section 12A (c) of SEBI Act, 1992 and Regulations 3(d), Regulations 4(1) and 4(2)(k) of PFUTP Regulations, 2003.

17. A company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors being responsible for the conduct of the business of a company and are liable for any non-compliance of law and such liability shall be upon the individual directors also. The Hon'ble Supreme Court of India, while describing what is the duty of a Director of a company, held in *Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602* as under:

".....A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially....."

18. Further, in cases of fraud, it is a settled position of law that the corporate veil can be lifted and the directors can be held liable for the fraud of the Company. In the present case, the details of present and past directors of Noticee no. 1 are as below:

Sr. No.	DIN	Name	Begin date	End date
1	08355010	Dhiraj Gupta	15/01/2019	-
2	08357686	Sumit Kumar	15/01/2019	-
3	07735818	Hemanchal Singh	13/11/2017	09/02/2019
4	08063861	Ravindra Singh	09/05/2018	09/02/2019
5	07980975	Ashutosh Sharma	13/11/2017	09/05/2018

19. As noted in the interim order, the earliest credits in the bank accounts of Noticee no. 1 have started in December 2017, while the latest credits have occurred in September 2019. The fact that the money has been collected during the tenure of the above mentioned directors, both past and present, in the form of fees for the services offered by Noticee no. 1, indicates that the directors mentioned in the table above were involved at the time of the violations. Further the corporate entity has been used, to perpetrate fraud on the investors. Thus, the violations committed by Noticee no. 1, which have been discussed above, pertain to the time periods when the persons mentioned in the table above were acting as its directors. Therefore, I am of the view that all the present and past directors of Noticee no. 1 i.e. Noticee no. 2, 3, 4, 5 and 6, are responsible for the violations committed by Noticee no. 1, namely, violation of provisions of Section 12(1) and 12A (c) of SEBI Act, 1992, Regulation 3(d), 4(1) and 4(2)(k) of PFUTP Regulations, 2003, and Regulation 3(1) of IA Regulations, 2013.

20. I note that Noticee no. 1, 3, 4, 5 and 6 have not disputed the findings of the interim order in respect of Noticee no. 1 carrying out investment advisory services without obtaining registration from SEBI as an 'Investment Advisor'. Rather it is the case of these Noticees, that they had entered into a Business Arrangement with Ms. Madhvi Kulkarni, wherein they were required to form a private limited company and handover the management of the Company's affairs to her and her team, who will run the company on their behalf and in lieu thereof the directors agreed to share the profit in the ratio of 30:70. It is their case that they had an oral agreement with Ms. Madhvi Kulkarni, that all the activities of the company like advise to clients on call, raising a bill, maintenance of website and hiring manpower, will be done by her. I note that none of these claims by Noticee no. 1, 3, 4, 5 and 6 are supported by any evidence. There is no single shred of document or other corroborating

material, evidencing these claims. Noticee no. 1, 3, 4, 5 and 6 have refused to accept ownership of the contents of the website “<https://www.fingravy.com>”, and baldly stated that Ms. Madhvi Kulkurni and her team used to manage the entire operations of the company including the website of Noticee no. 1. Firstly, there is no proof of this claim. Even if it were assumed that Noticee no. 1 was managed by Ms. Madhvi Kulkurni, I note that the said Noticees cannot evade from the consequences of her actions as she was nothing but their agent and as claimed by these Noticees themselves that they used to share profits in the ratio of 30:70. Without prejudice to the aforesaid, even if it were assumed that Ms. Madhvi Kulkurni committed fraud upon Noticee no. 1, 3, 4, 5 and 6, I do not find any evidence of any action taken by these Noticees against her after discovery of such alleged malpractices by her. In the absence of any proof, I find that the claims of Noticee no. 1, 3, 4, 5 and 6, to blame Ms. Madhvi Kulkurni and her team for all the wrongdoings, is merely an afterthought, designed to escape from the consequences of the present proceedings. I note that in the absence of any evidence, none of the claims of these Noticees can be verified. Therefore, the contentions of Noticee no. 1, 3, 4, 5 and 6 are untenable.

21. I note that the interim order has *prima facie* treated the credit entries in the three bank accounts of Noticee no. 1 as income from unregistered investment advisory services. However, Noticee no. 1, 3, 4, 5 and 6 have claimed that the credit entries relate to the following sources: (i) fees from consultancy provided to clients by Ms. Madhvi Kulkurni and her team; (ii) Due to shortage of funds in Noticee no. 1, funds were transferred into bank account of Noticee no. 1 from a group company for distribution of salary to employees; (iii) Fees from other services provided by us i.e. to provide analysis report related to Tax and Management services. I note that no proof has been adduced by these Noticees to back their claims. There is no shred of evidence like Invoice, Service Tax returns, confirmation from clients, etc. to prove that the money was indeed received for the purpose ‘fees for Tax and Management Consultancy’, which it is claimed to be, by these Noticees. On the other hand, there is ample evidence on record to establish that Noticee no. 1 was providing unregistered investment advisory services through its website and online payment was received through the payment gateway “Avantgrade” and offline

payment were received through credit into the three bank accounts of Noticee no. 1, as mentioned on the website. Further, I note that, during the period under review, the website of Noticee no. 1 did not mention anything about 'Management Consultancy Services' being offered by Noticee no. 1. Thus, the claim that some portion of the money was received towards fees for Management consultancy services being offered by Noticee no. 1 is also not proved. I note that Noticee no. 1 has claimed to have annexed as Annexure-7 to its reply, data in excel sheet, however, no such Annexure 7 to the reply is found. Nonetheless, mere data in excel sheet without supporting proofs would not help the case of these Noticees.

22. I note that Noticee no. 2 has stated that he is a Uber Tax Driver, and completely unaware of the fact that someone has used his name as the director of Noticee no. 1. He has claimed that his identity and PAN has been illegally used with intention of cheating and he has never applied for DIN. It is his case that, as he became aware about the fraud committed against him, he approached the Vijay Vihar Police station at Delhi, to lodge a complaint. I note that Noticee no. 2 claims to have been fraudulently been made the director of Noticee no. 1. I have perused the copy of the Police Complaint provided by Noticee no. 1. From the copy, it cannot be ascertained with certainty whether the said complaint was actually lodged with the police, since the acknowledgment stamp of the police station is not clearly visible. Nonetheless, I shall proceed on the assumption that the police complaint has been lodged, but the said complaint has not culminated into an FIR.

23. I note that for procuring a DIN, eform DIR-3 is required to be filed by the applicant with MCA. The eform DIR 3, requires the form to be digitally signed by the applicant, with the help of a 'Digital Signature Certificate' ('**DSC**'). A DSC can be procured from any of the Certifying Authorities which are licensed under the Information Technology (Certifying Authority) Rules, 2000, to operate as such. The Controller of Certifying Authorities (an Authority established under the aegis of Ministry of Information Electronics & Information Technology to regulate the working of Certifying Authorities) from time to time prescribes, Identity Verification Guidelines which is required to be followed by all Certifying Authorities, while accepting and scrutinizing new DSC applications. The guidelines *inter alia* provide for verification of signature of the subscriber on the application form with the

signature in the ID Proof provided by the applicant, cross-verification of documents submitted at the time of application with the original identity documents, verification of mobile no. provided at the time of DSC application by calling to confirm the veracity of the application, etc. Subsequent to the issuance of the DSC, the eform DIR-3 is filed with MCA for allotment of DIN. Even at this stage, the Company Secretary in employment/ any director of the company/ a CS/CA/CWA in whole Time Practice, *inter alia* certifies that, 1. *“he has satisfied himself about the identity of the applicant based on the perusal of the original of the attached document. 2. He has verified having attested the photograph of the DIN applicant, who is personally known to him; or who met him in person along with the original of the attested documents.”* Subsequent to the allotment of the DIN, an eform DIR-12 is to be filed with MCA, to intimate the appointment of a director in the company. I note that even this eform is certified by a CS/CA/CWA in whole time practice who states that, *“1. He has verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to that form has been suppressed. 2. He further certifies that: the said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order”*. In view of the above, I note that at every stage involved in the process of appointment of director in a company, there are multiple validations/ verifications/ certifications/ attestations by various stakeholders which also includes professionals like CA/ CS/ CWA. Therefore, to say that someone has been fraudulently made as a director of a company is a difficult proposition to be accepted. Nonetheless, even if it were assumed that Noticee no. 2 had no role to play in being made a director in Noticee no. 1, the documents available on record do not inspire confidence in the story being narrated by Noticee no. 2. From the attachment of eform DIR 12, I find a document named ‘DIR-2 – consent form to act as director of a company’. From a cursory look at the signature on this consent form, I find that, it matches with the signature on the PAN Card of Noticee no. 2. Further, while Noticee no. 2 claims to have lodged a police complaint, but from the copy of the police complaint, I find that the signature of the Noticee does not match the signature on the PAN Card of Noticee no. 2. This further raises doubts on the authenticity of the police complaint. Further, assuming for arguments sake that Noticee no. 2’s claims were true, however, I do not find any steps being taken by Noticee no. 2 to remove his name

from the directorship of Noticee no. 1. As on the date of this order, Noticee no. 2 continues to be the director of Noticee no. 1 as per records at MCA. Noticee no. 2 also fails to explain as to how his identity documents such as PAN Card and Adhar Card came in the hands of the purported wrongdoers. In view of the aforesaid facts, I do not find any merit in the contentions and claims being made by Noticee no. 2 and rather find that the aforesaid claims are being made by Noticee no. 2 only to escape from the consequences of the present proceedings.

24. I note that in the case of Shri C. Paranitharan and Others and TrendMarket 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 there into 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.

25. I note that the aggregate amount of Rs. 6,13,33,946.79/-, which has been collected by the Noticee no. 1 in the three bank accounts, by providing unregistered investment advisory services, still needs to be refunded to the investors/clients.

DIRECTIONS:

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

- a) The Noticee no. 1, 2, 3, 4, 5 and 6 shall jointly and severally, 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 Noticee no. 1, 2, 3, 4, 5 and,6 shall jointly and severally be responsible 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 banking channels (and not cash transfers), which ensures audit trails to identify the beneficiaries of repayments;
- d) After completing the refund as directed in para 26 (a) above, within a period of 15 days, the Noticee no. 1, 2, 3, 4, 5 and 6, shall jointly and severally be responsible to file a report with SEBI detailing the amount refunded, 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, name of the parties refunded, communication address, mobile numbers and telephone numbers etc.;
- e) The remaining balance amount, if any, which could not be refunded to the investors/ complainants/ clients, for any reason whatsoever, 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 Noticee no. 1. Thereafter, remaining amount if any will be deposited in the Investor Protection and Education Fund maintained by SEBI;
- f) The Noticee no. 1, 2, 3, 4, 5 and 6, 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 not to allow any debits/ withdrawals from the bank accounts of Noticee no. 1, 2, 3, 4, 5 and 6, except for the purpose of making refunds to the clients/investors/complainants who were availing the investment advisory services from the Noticee no. 1 and depositing the balance amount with SEBI, as directed in this order, from the bank accounts of Noticee no. 1, 2, 3, 4, 5 and 6;

- g) The Noticee no. 1, 2, 3, 4, 5 and 6, 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 one (1) year from the date of this order or till the expiry of one (1) year from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in para 26(a) and 26(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 26(f) above shall cease to operate within 15 days thereafter;
- i) The Noticee no. 1, 2, 3, 4, 5 and 6, shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 15(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.

27. The direction for refund and depositing the balance amount with SEBI, as given in para 26(a) and (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/ authority of competent jurisdiction.

28. This order comes into force with immediate effect.

29. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, all banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Date: November 29, 2022
Place: Mumbai

sd/-
ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA