

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**CORAM: KAMLESH C. VARSHNEY, WHOLE TIME MEMBER****ORDER**

**In compliance with order dated January 12, 2023 of the Hon'ble Securities
Appellate Tribunal**

In respect of:

Sl. No.	Noticee	PAN
1	Mr. Rajesh Ranjan, Proprietor of M/s. KM Financials	AROPR5161Q

In the matter of Unregistered Research Analyst

TABLE OF CONTENTS

	Particulars	Paragraph Nos.	Page Nos.
A	Background	1-4	1-4
B	Hearing and Submissions	5-7	4-6
C	Consideration of Issues and Findings	8-15	6-9
D	Directions	16	9-10

A. Background :

- 1) The present proceedings originate from an order dated January 12, 2023 passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") in an Appeal No. 42 of 2023 filed by Mr. Rajesh Ranjan, Proprietor of M/s. KM Financials (hereinafter referred to as "**Noticee**"). The Hon'ble SAT vide its above mentioned order has while disposing of the appeal held that-

“In our view, the email of the Manager of SEBI cannot be sustained and we find he is not appropriate authority to consider the matter and issue such directions, namely, whether the compliance has been made by the appellant or not. Such direction only be passed by the WTM. Consequently, the email is quashed. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order on the issue of compliance. The misc. applications are disposed of accordingly.”

- 2) Before proceeding further to pass an order on the issue of compliance, in terms of the order of the Hon'ble SAT, it is felt expedient to have the facts in brief, that necessitated the passing of the order dated April 22, 2022 by the Whole Time Member of SEBI (hereinafter referred to “**SEBI Order**”). Relevant facts necessary for the disposal of the instant proceeding are that a show cause notice dated September 28, 2021, was issued against the *Noticee*, Mr. Rajesh Ranjan, (sole proprietor of M/s KM Financials) calling upon as to why suitable direction under sub-section (4) of section 11 and sub-section (1) of section 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) should not be issued for the alleged violations of the provisions of sub-section (1) of section 12 of the SEBI Act and sub-regulation(1) of regulation 3 of the SEBI (Research Analyst) Regulations, 2014 (hereinafter referred to as (“**RA Regulations**”). In the above show cause notice, it was alleged that the *Noticee* had indulged in the activities of the Research Analyst without seeking registration with the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as mandatorily required under the relevant provisions of the SEBI Act and the RA Regulations.
- 3) Subsequent to the issuance of show cause, *Noticee* was given sufficient opportunity to file his response refuting the allegations and was further provided an opportunity to be heard. Having heard the *Noticee* and after carefully perusing the written reply of the *Noticee*, WTM vide the SEBI Order, inter alia directed the *Noticee* to take steps in refunding the fees/consideration received by the *Noticee*. Relevant portion of the directions issued under the SEBI Order is as under:

“Para 19:

- a. *The Noticee shall, through registered post with acknowledgment due, write to clients who had dealt with the Noticee prior to grant of registration as a Research Analyst, giving them the option to take refund of the fees or consideration in any form paid by them during the said period.*
- b. *In respect of the clients who exercise the option to take refund, the Noticee shall refund the money received from them as fees or consideration in any form in respect of the unregistered Research Analyst activities, within three months of the coming into force of this direction.*
- c. *The repayments to the 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 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 of completion, duly certified by an independent Chartered Accountant;*
- e. *The Noticee is prohibited from taking new clients as a Research Analyst till the completion of refunds to complainants/ clients as directed in para 19(b) above;*
- f. *The Noticee is hereby warned to exercise caution, care and due diligence in his future conduct as a Research Analyst in all his dealing with his clients and to ensure compliance with the applicable laws at all times in future.”*

- 4) The Noticee, in compliance with the directions issued under the SEBI Order, had stated *inter alia* that it had dealt with 120-130 clients during the period when he was engaged in the acts of Research Analyst without having registration with the SEBI. The Noticee had also submitted a report certified by a Chartered

Accountant in support of the claim of having taken steps in compliance of the aforesaid SEBI Order to refund the investors. *Noticee* submitted to have paid back/refunded to 6 clients amounting to INR 1,75,500. He also stated that, 18 clients had responded that they were not interested/inclined to receive the fee back and no response was received from 73 investors/ clients. The reply and the report of the Chartered Account specifically stated that no steps were taken *qua* certain clients/investors from whom fee amounting to INR 9,05,708 was received. In response to the above, the SEBI vide email dated September 12, 2022, rejected the contention of refund and stated that the *Noticee* was required to refund the entire amount collected for the period, he had acted as an unregistered Research Analyst. Being aggrieved to the communication received through above email dated September 12, 2022, an appeal bearing Appeal No. 42 of 2023 was preferred before the Hon'ble SAT and the Hon'ble SAT vide its order dated January 12, 2023, directed for considering the issue of compliance afresh. The directions of the Hon'ble SAT is produced earlier at para 1 of this order.

B. Hearings and Submissions

- 5) In compliance to the aforesaid direction of the Hon'ble SAT and in terms of principals of natural justice, the *Noticee* was given an opportunity to be heard on March 28, 2024. The *Noticee* was also advised to provide submissions, if any, in the said matter. The hearing was rescheduled to April 3, 2024 and while communicating the same, the *Noticee* was once again advised to provide submissions, if any, in support of his arguments. In response to the same, the *Noticee* vide email dated April 1, 2024, informed that he does not have any further submissions in the matter. On the date of hearing, Mr. Saurabh Bachhawat, the Authorised Representative of the *Noticee* provided submissions in line with the earlier replies. The *Noticee*'s submissions dated August 3, 2022 and September 12, 2022, with respect to its compliance to the SEBI Order are as under :

6) Submissions of the *Noticee* vide reply of August 3, 2022 and September 12, 2022:

- a) The *Noticee* stated to have complied with the directions of SEBI Order.
- b) The *Noticee* claimed that he was directed to give option to clients who paid him fee prior to the grant of registration as a Research Analyst (approx. 120-130 clients) to refund of the fees or consideration paid by them. The *Noticee* stated that he had gathered information of 97 clients and out of which he had communicated through WhatsApp, Email and SMS and gave clients the option to seek refund of fees paid. Out of the total 97 clients approached by the *Noticee*, only 6 clients requested for a refund totalling to a sum of INR 1,75,500.
- c) Attached to this reply, *Noticee* has provided an Auditor's Certificate by Gireesha CG & Associates, Chartered Accountants. Gireesha CG & Associates certifying that, Mr. Rajesh Ranjan, proprietor of M/s. KM Financials, having PAN:AROPR5161Q, has communicated to the clients via registered post and where postal address was not available, contact was done through electronic communication, email, electronic messages, providing exercise of option to seek refund of fee or consideration paid by them to the *Noticee* in respect of the unregistered Research Analyst activities.
- d) Further, the report also stated to have verified the documents, screen shots of electronic communication made, repayments to the investors, bank statement, client acknowledgement against receipt of refunds and sufficient evidences with respect to the communication made to clients for exercise of option for refund.
- e) The certificate also stated that repayment to investors are effected only through electronic fund transfer or through other appropriate banking channels and sufficient audit evidence has been verified to ensure and identify the beneficiaries of repayments.

f) The following table was part of the attached certificate:

Particulars	No. of clients	Amount (Rs.)
Repayment made	6	1,75,500.00
NOC issued (do not want refund and are satisfied with the services provided by the <i>Noticee</i>)	18	7,56,000.00
Not replied / Not responded	73	18,89,591.00
Total	97	28,21,091.00

g) Gireesha CG & Associates, claimed to have issued the certificate at the request of the *Noticee* after careful verification of sufficient and appropriate evidence of documents in order to comply the directions issued by the SEBI.

h) The *Noticee* requested to allow him to resume his Research Analyst activities to new clients as this is his only source of income and assures to follow the Research Analyst Regulations diligently and work with honesty.

7) Upon an enquiry by the SEBI, the Chartered Accountant has also separately replied confirming the issuance of the certificate to the *Noticee* after verifying the documents.

C. Consideration of Issues and Findings

8) Having considered the materials on record including the SEBI Order, reply of the *Noticee*, I find that the issue requires adjudication in the instant proceedings is whether the *Noticee* has taken steps in compliance of the SEBI Order and completed the refund exercise so as to uplift the prohibition imposed vide direction at sub para(e) of para 19 of the SEBI Order.

9) I note that the SEBI Order had made categorical findings that the *Noticee* was engaged in activities of Research Analyst without having the mandatory

registration from the SEBI. The said SEBI Order having considered the submissions of the *Noticee* had also crystallised that an amount of INR 37,26,799.27 was received by the *Noticee* from its clients for rendering the activities of Research Analyst for the period, when it was not having registration with the SEBI. It was also noted that subsequently the *Noticee* has obtained the required registration from the SEBI. Considering the same, while founding the acts of *Noticee* as unlawful, *Noticee* was inter alia directed to take steps giving option to its investors to take refund of the fee or consideration paid in any form. Upon taking steps in terms of the directions as elucidated in the SEBI Order, *Noticee* was required to submit a report duly certified by an independent Chartered Accountant in due compliance of the directions issued under the SEBI Order.

- 10) In this respect, it is observed that the *Noticee* has claimed to have received money (INR 37,26,799.27) from around 130 clients. He has further submitted to have approached 97 clients providing them an option to seek refund of fee but only 6 clients have asked for refund, to whom INR 1,75,500 was paid. The *Noticee* has also submitted that 18 clients have issued No Objection Certificate waiving the refund of fee and 73 have not responded. In this process, 97 clients involving INR 28,21,091 were given the option to exercise refund of fee and those expressed refund, were duly paid. The *Noticee* has submitted a certificate of a Chartered Accountant in support of the above claim.
- 11) Having heard the *Noticee* and explanation submitted during the course of hearing, I am of the view that assuming that *Noticee* has taken steps and approached investors providing them option to seek refund of fee, however, the said set of investors/clients are 97 in number to whom option to exercise to the extent INR 28,21,091 was provided. There is no explanation about the remaining set of investors/clients to whom INR 9,05,708.27 is due to be refunded. The explanation submitted during the hearing was that the remaining set of investors who are not approachable will be paid the fees due to them upon lifting the prohibition and permitting to act as Research Analyst. From the above, it is evident that to the extent of INR 9,05,708.27, the *Noticee* has not

produced any document to claim that option was given in due compliance of the direction given under the SEBI Order so as to hold that necessary and effective steps were taken by the *Noticee* in due compliance of the directions issued vide SEBI Order.

12) Having found that no steps were taken in respect of investors/clients from whom admittedly, the *Noticee* had received fee to the extent of INR 9,05,708.27, *Noticee* was suggested to take steps as directed by the Hon'ble SAT while disposing the Appeal No. 567 of 2022 vide order dated September 21, 2022, in the matter of *C Paranitharan vs SEBI*, wherein it was directed that the balance amount is to be deposited with the SEBI for certain period to satisfy the claim received, if any, and thereafter such amount will be credited to the Investor Protection & Education Fund (for short IPEF). In response to a similar suggestion of depositing the amount of INR 9,05,708.27, the *Noticee* has vehemently contended that scope of the instant proceedings is limited only to determine the issue pertaining to compliance of directions passed in the SEBI Order. It has also been contended that no fresh direction is permitted to be issued and any effort in this direction would be outside the remit of the proceedings remanded by the Hon'ble Tribunal.

13) While, the *Noticee* has objected to the above suggestion, a submission has been advanced for relaxation of direction recorded in sub para (e) of para 19 of the SEBI Order and sought permission to undertake the activities of Research Analyst as he is not in employment for quite a long time. The *Noticee* has also sought the relaxation for the above direction of refund to the clients to the extent of INR 9,05,708.27. Having considered the above, I find no merit in the above submission as the same is contradictory to his submissions in the preceding paragraph and against the mandate of the remand proceeding. The *Noticee* on the one hand has submitted that no new direction is permitted to be issued in the instant proceedings and on the other hand advanced argument seeking relaxation of the direction so as to permit him to carry on the activities of Research Analyst.

- 14) I find that, there is no dispute to the allegations and findings recorded in the SEBI Order that the *Noticee* was engaged in acts without seeking registration from SEBI and had received fee from clients while indulging in unlawful activities. Any relaxation of the nature sought by the *Noticee* is not only contrary to law but also would amount to paying premium upon default. The SEBI Order has not been challenged and has attained finality. Therefore, no relaxation can be allowed from the direction of the SEBI order. Hence, the request of the *Noticee* to modify the SEBI Order is rejected.
- 15) Having considered the submissions advanced and materials produced, it is observed that the *Noticee* has filed reports along with a certificate of a Chartered Accountant within the time line. However, there is no compliance on the part of the *Noticee* to the extent of amount of INR 9,05,708.27 received by the *Noticee* from its clients while acting as unregistered Research Analysts. I further find that the *Noticee*, has acknowledged of having received INR 37,26,799.27, as fees for unregistered research advisory activities/services, and has not provided any rationale with respect to the attempts made for refund of amount to the extent of INR 9,05,708.27. Under the circumstances, I find the materials on record are sufficient to conclude that the *Noticee* has not produced materials to demonstrate of having taken steps in compliance of directions issued under the SEBI Order to the extent of INR 9,05,708.27. In view of the above, I hold that the *Noticee* has not complied with the directions issued against it in the SEBI Order, to the extent of INR 9,05,708.27.

D. Directions

- 16) In view of the findings recorded in the preceding paras, while disposing of the instant proceedings in compliance of the order of the Hon'ble Tribunal, it is held that *Noticee*, Mr. Rajesh Ranjan, Proprietor of KM Financials (PAN: AROPR5161Q) has not complied with the directions issued against him in the SEBI Order of April 22, 2022, and failed to produce document of having provided option to investors/clients to the extent of refund of INR 9,05,708.27

and therefore, the direction contemplated at sub para (e) of para 19 of the SEBI Order dated April 22, 2022 will remain in force till the completion of compliance of refund to clients/investors.

17) Copy of this order shall be sent to the *Noticee*.

18) Copy of this order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

Sd/-

**DATE : APRIL 26, 2024
PLACE : MUMBAI**

**KAMLESH C. VARSHNEY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**