

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Regulation 28 (2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Sl.No	Name of the Entity	Registration No./ PAN
1	Mr. Amit Baburao Ahire	INA000002660/ AOFPA9923H

1. Mr. Amit Baburao Ahire (“hereinafter referred to as “**the Noticee**”) is an ‘Investment Adviser’ registered with Securities and Exchange Board of India (“**SEBI**”), having registration number INA000002660.
2. SEBI vide an interim order dated June 15, 2015, against M/s HBJ Capital Services Private Limited, its Directors and M/s HBJ Capital Venture LLP and its partners (collectively referred as “**HBJ**”), issued directions, *inter alia*, to cease and desist from acting as an Investment Adviser and Alternative Investment Fund and cease to solicit or undertake such activities or any other unregistered activities in the securities market directly or indirectly, any manner whatsoever.
3. Subsequently, SEBI received a complaint from a former customer of HBJ on October 6, 2015, alleging, *inter alia*, that he was receiving investor advisory/promotions from OSAR Capital and that HBJ had recruited an independent financial advisor, viz. Mr. Amit Baburao Ahire and was using his SEBI Registration number at OSAR Capital.

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4. Consequently, SEBI conducted a preliminary examination of the activities of the Noticee including the website of OSAR Capital and it was *prima facie*, observed that the SEBI registration number of the Noticee was mentioned on the website of OSAR Capital. Upon enquiry, the Noticee submitted that OSAR Capital is a sole proprietary concern of the Noticee. It has also been observed that in return for money, Noticee allowed HBJ/its directors to use his SEBI registration for carrying out investment advisory services in the name of OSAR Capital. Accordingly, SEBI conducted an inspection of books of accounts, records and documents of HBJ to verify, whether HBJ/its directors has violated the directions issued by SEBI vide ad-interim order dated June 15, 2015 by rendering advisory services in the name of OSAR Capital by using the Noticee's registration with SEBI.
5. Upon inspection, SEBI observed that HBJ/its directors failed to comply with the SEBI order dated June 15, 2015 to cease and desist from acting as an Investment Adviser directly or indirectly and by using the Noticee's SEBI registration details/profile, HBJ/its directors has continued to provide investment advisory services in the name of OSAR Capital. SEBI further, observed that the Noticee in return for money had knowingly and willingly allowed HBJ/its directors to use his SEBI registration for carrying out investment advisory services. It has further observed that the Noticee has failed to inform SEBI about the use of his independent registration with SEBI in the name of his sole proprietary concern OSAR Capital.
6. In view of the above, SEBI initiated proceedings against the Noticee in terms of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as '**the Intermediaries Regulations**'). SEBI vide order dated January 13, 2017 appointed a Designated Authority (hereinafter referred to as 'DA') under Section 19 of the SEBI Act read with Regulation 24 of the Intermediaries Regulations to enquire into the alleged violations of Regulation 13(a) and 13(b) of SEBI (Investment Advisor) Regulations, 2013 (hereinafter referred to as '**IA Regulations**') read with Clauses 1 and 2 of Code of Conduct specified for Investment

Advisers under Schedule III of IA Regulations. On completion of the proceedings, the DA vide Report dated January 31, 2018 recommended cancellation of the certificate of registration granted to the Noticee.

7. Subsequently, SEBI issued a Show Cause Notice dated June 11, 2018 (“SCN”) under Regulation 28(1) of the Intermediaries Regulations, to the Noticee, asking him to show cause as to why the action recommended by the DA should not be taken against him.
8. The Noticee was advised to reply to the SCN within twenty one (21) days from the receipt thereof. SEBI informed the Noticee that in case of failure to reply, it would be presumed that he had no explanation to offer and that the matter would be proceeded on the basis of the evidence available on record. The Noticee was further advised to indicate if he would like to avail an opportunity of personal hearing before SEBI. A copy of the Report of DA was also forwarded to the Noticee along with the said SCN.
9. *Service of SCN:* The SCN was sent to the Noticee through Speed Post with acknowledgment. The SCN sent to the Noticee was returned undelivered with the remarks “left”. However, the Noticee contacted SEBI and vide e-mail dated November 29, 2018, the SCN was served to the Noticee and advised him to file reply within seven days. No reply has been filed by the Noticee till date.
10. Subsequently, vide e-mail dated December 04, 2018, a personal hearing was granted to the Noticee on February 01, 2019. However, the hearing was rescheduled to February 05, 2019 and the same was communicated to the Noticee vide e-mail dated December 12, 2018. The Noticee vide return e-mail confirmed his appearance for the personal hearing. However, no one appeared on behalf of the Noticee on February 05, 2019 nor sought any adjournment or filed any written submission till date. In view of the same, I am constrained to proceed with the material available on record.

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11. I have considered the SCN along with its annexures, the Report submitted by DA and all other relevant material available on record. On perusal of the same, the following issue arise for consideration:

- *Whether the Noticee, Shri Amit Baburao Ahire, knowingly allowed HBJ and its directors, prohibited entities vide SEBI interim order dated June 15, 2015, to provide investment advisory services through OSAR Capital, a sole proprietary concern of the Noticee and also failed to inform SEBI of the material change in the information submitted at the time of registration thereby violated the conditions of certificate of registration granted to the Noticee and code of conduct prescribed under the IA Regulations warranting cancellation of his certificate of registration?*

12. Before dealing with the issue, the relevant legal provisions, the contravention of which have been alleged in the instant case are reproduced hereunder:

***SEBI (Investment Advisers) Regulations, 2013***

*Conditions of certificate.*

*13. The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

*(a) the investment adviser shall abide by the provisions of the Act and these regulations;*

*(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;*

***CODE OF CONDUCT FOR INVESTMENT ADVISER***

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*1. Honesty and fairness: An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.*

*2. Diligence: An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.*

***Issue : Whether the Noticee, Shri Amit Baburao Ahire, knowingly allowed HBJ and its directors, prohibited entities vide SEBI interim order dated June 15, 2015, to provide investment advisory services through OSAR Capital, a sole proprietary concern of the Noticee and also failed to inform SEBI of the material change in the information submitted at the time of registration thereby violated the conditions of certificate of registration granted to the Noticee and code of conduct prescribed under the IA Regulations warranting cancellation of his certificate of registration?***

13. I note that the Noticee in his individual capacity has been registered as an investment adviser with SEBI. The Registration number of the Noticee is INA000002660. The said certificate bears the name of Amit Baburao Ahire. He obtained the SEBI Registration on February 16, 2015 and the office address of the Noticee is at 637-1/4, Dr. Babasaheb Ambedkar Co-op Housing Society, Park Site, Vikhroli (west), Mumbai – 400079.

14. As regards the issue of knowingly allowing a prohibited entity HBJ/its directors to use Noticee's SEBI registration, I note that the Noticee did not file any submissions nor availed the opportunity of hearing granted to him. In view of the same, I am constrained to rely upon the material available on record such as Enquiry Report, various submissions made by the Noticee through e-mails and replies and his correspondence with HBJ and its Directors, the Inspection Report of HBJ, the website of OSAR Capital, submissions of the Noticee before the DA, etc. On an examination of the same, I note the following:

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14.1 The Noticee, vide emails dated October 13 and 14, 2015 submitted, *inter alia*, that “OSAR Capital is a sole proprietary concern and he is the proprietor of the OSAR Capital”. It was also stated that he has registered OSAR Capital a proprietary concern on August 24, 2018. Further, it is stated that “not informing SEBI is not intentional but just on account of being completely tied up in setting up each and every activity of his business. Moreover since there is no time frame within which the material changes are to be informed to SEBI, he thought he would have some notification time to and was hence planning to inform SEBI once the business gets established in a couple of months”.

14.2 Further, I note that the following details from the website of OSAR Capital:

- **“Our Vision:** *To be the most trusted and well-respected investment advisory firm in India.*
- **Company Overview:** *We are a full-service wealth advisory firm committed to helping investors/traders plan a successful financial future....*
- **Our Mission:** *....With creativity and passion, we deliver innovative and customized investment solutions.*
- **Our Team:** *Amit Baburao Ahire- Investment Adviser and Compliance Officer”.*

15. In response to the SCN issued by the DA, the Noticee vide his reply dated June 20, 2017 submitted that directors of HBJ contacted him and offered the option to rent his investment advisory registration or an option to work as compliance officer and investment adviser with their company and they will pay him salary of Rs. 50,000/- per month. It was also stated that HBJ is creating a new company to provide service to its clients where the Noticee will work as an employee. All the documents were signed and processed by HBJ/its directors by using the Noticee’s documents which were given to them for employment purpose. It was contended by the Noticee that he was just working as investment adviser for them on employment term and not involved in other things until enquiry from SEBI.

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15.1 The first point that arises for consideration is whether the Noticee was working as an employee of OSAR Capital. I observe from the records that OSAR Capital has been formed with the Noticee as its proprietor. Further, the said fact was also admitted by the Noticee vide his e-mails dated October 13 and 14, 2015. The Noticee had submitted that Mr. Kumar Harendra and Mr. Vadiraj formed the OSAR Capital by using all the documents which were given to them by the Noticee for the purpose of employment. I also note from the Enquiry report that the Noticee claims that only Mr. Kumar Harendra and Mr. Vadiraj formed the proprietorship firm OSAR Capital and that too without his knowledge. I am not inclined to accept the said contention because the Noticee himself admitted vide e-mail dated October 13, 2015 to SEBI that OSAR Capital is his proprietary concern. I further note from the Noticee's email dated October 27, 2015 that Mr. Kumar Harendra called Axis Bank executive to fill new application form for account opening in the name of OSAR Capital and the Noticee signed the said form. Further, I also note from the enquiry report that the Noticee had given signed blank cheques of Axis Bank to Mr. Kumar Harendra which is not possible if he would not have knowledge that he is the proprietor of the OSAR Capital.

15.2 Further, I note from the enquiry report that the Noticee vide an email dated October 07, 2015 to Mr. Kumar Harendra, requested him to make certain changes in website as per their telephonic discussions and show his designation either as proprietor or owner. The Noticee also stated that they need to send any document that validate the ownership of OSAR Capital is that of the Noticee and he decided to send service tax certificate copy to SEBI. This communication between Mr. Kumar Harendra and the Noticee clearly establishes that the Noticee was very much aware that he is the proprietor of the OSAR Capital.

15.3 In view of the above, the submission of the Noticee that he was an employee and also the website of OSAR Capital showing Amit Baburao Ahire as an Investment Adviser and Compliance Officer cannot be accepted. Since it is established that he is a proprietor

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of OSAR Capital, Rs. 1,20,000/- he has received from Kumar Harendra cannot be for the purpose of salary but only as a compensation for allowing them to use his SEBI registration as an Investment Adviser.

16. The second point that arises for consideration is whether the Noticee was aware of the SEBI ad-interim order passed by SEBI on June 15, 2015. It is the stance of the Noticee in his reply dated June 20, 2017 that when Noticee raised the point about existing order of HBJ they told him that only company is not allowed to work but directors are. Therefore, the Noticee was very well aware of the interim order. It is noted that even a cursory reading of interim order would show that HBJ and its directors were prohibited from doing *inter alia* investment advisory activities. Therefore, it cannot be accepted that he blindly accepted the version of the directors that only the Company is prohibited to do the investment advisory services and not the directors.

17. Next point for consideration is whether having knowledge of the interim order, the Noticee has allowed debarred entities HBJ/its directors to use his registration number for carrying out investment advisor activity through OSAR Capital.

17.1I note from the contents of the website of OSAR Capital that it is offering Investment advisory services. I also find from the reply dated March 28, 2016 in respect of SEBI Order dated March 17, 2016 wherein he had admitted that he allowed debarred entities HBJ/its directors to use his registration number for carrying out investment advisor activity. However, he contended that his intention was not to cheat or fraud anybody.

17.2 I note from the e-mail of the Noticee dated October 27, 2015 that the Noticee has admitted his association with Mr. Kumar Harendra, Director of HBJ and Mr. Vadiraj. The same is further evidenced by the fact that Mr. Kumar Harendra booked the flight tickets for the Noticee by using his own credit card and then e-mailed those flight tickets to the Noticee for his travel.

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17.3 Further, the fact that Noticee admitted to giving his signed blank cheques of Axis Bank to Mr. Kumar Harendra, proves that the money which is credited in the Bank as advisory fee can be withdrawn by Kumar Harendra as if the cheques were drawn by the Noticee. This also proves that the benefits of providing investment advisory activity will be used by Kumar Harendra of HBJ. This fact further proves that the investment advisory services were meant to be done by Kumar Harendra/HBJ in the name of OSAR Capital which was a façade provided by the Noticee.

17.4 The Noticee himself admitted vide e-mail dated October 27, 2015 that he has pointed out the cease and desist order against HBJ to Mr. Kumar Harendra and Mr. Vadiraj. As discussed earlier, even a cursory reading of the order would show that not only HBJ but also all its directors and partners were directed to cease and desist from carrying out Investment Advisory services directly or indirectly. Thus these facts, clearly point to the fact that the Noticee had knowingly and willingly allowed HBJ/its directors to provide investment advisory services using his SEBI registration through his sole Proprietary concern OSAR Capital.

In view of the above, I find that that the Noticee has knowingly and willingly allowed prohibited entities HBJ/its directors to continue providing investment advisory services using his SEBI Registration number through his sole proprietorship concern OSAR Capital.

17.5 It is noted that the under section 13(a) of the IA Regulations, investment adviser shall abide by the provisions of the Act and these regulations. HBJ/its directors by non-complying with the interim order dated June 15, 2015 has disobeyed the said order and the respective provisions of the SEBI Act. Aiding and abetting violations of HBJ/its directors is against the requirement of honesty and fairness mandated under the Code of conduct prescribed under IA Regulations. Aiding and abetting the prevented entities in providing investment advisory services through them. It is a breach of trust reposed by

the investors on the registered investment advisers. The recipients of investment advice has trust in the registered investment advisers as the said advice is provided under the regulatory regime prescribed by SEBI. The fact that a person is prevented from providing such investment advice is to protect the investors from unauthorized/unregistered advisers. If someone helps such unregistered advisers to extend their advisory services, the investors in effect get their services from persons who are not permitted to do so which is also in effect the breach of honesty and fairness (clause 1 of code conduct) and diligence (clause 2 of code of conduct) envisaged by the IA Regulations for the protection of investors. Therefore, Noticee has violated clause (1) and (2) of Code of conduct which is also violation Regulation 13(a) of the IA Regulations.

18. As regards the issue of whether the Noticee failed to inform any material change in the usage of his certificate of registration, I note that the Noticee was registered with SEBI as an individual investment adviser on February 16, 2015 and OSAR Capital was formed on August 24, 2015. It is already found that OSAR Capital is the sole proprietary concern of the Noticee. The material change in the usage of Noticee's certificate of registration, i.e. the registration which was granted to the Noticee in his individual capacity in his name was used for his sole proprietorship. This fact was communicated by the Noticee only on October 13, 2015. Further, the Noticee had never informed SEBI about the change of information as to name i.e., from individual to proprietor of the firm OSAR Capital. If there was no complaint from the former customer of the HBJ then the matter would not have come to the notice of SEBI and the Noticee may not have continued to use the said registration without informing SEBI. I find that OSAR Capital was operating as an investment advisor and offering its services based on the SEBI registration of the Noticee in his individual capacity.
19. I find that the Noticee has failed to notify SEBI about this change in information relating to the name in relation to his Registration under the IA Regulations in a timely manner. In this regard I note that the provision of the Regulation 13(b) of the IA Regulation states that

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the “*investment adviser shall forthwith inform the Board in writing*” if there is any material change in the information already submitted. One may argue that change of name from the individual capacity to proprietary capacity, as legally there is no such difference between the individual and the proprietor, cannot be termed as material change. However, what matters is the importance of name change from the perspective of investors. The fact that SEBI is providing different names in the certificate of registration for individual and the proprietor, takes into account investors perspective on the importance of the names which is present in the certificate of registration as the Investment Adviser. The identity of investment adviser as indicated through the “name” mentioned in the certificate of registration, matters to an investors, as in market realities “name” which in some cases has gathered a good will value, from the perspective of effective decision making in their choice of selecting investment advisers. Since name has inherent value for decision making of investors, I find that change of name from individual to proprietary without disclosure to the Regulator and therefore not to the investors, is a material change of information within the meaning of Regulation 13(b) of the IA Regulations. I am further of the view that this provision does not allow for any lapse of time before informing SEBI of any material change in furnishing information, as that might unduly compromise the interests of investors. I note that nearly two months had elapsed before the Noticee informed SEBI; that too upon receiving an email from SEBI seeking information. In view of the above, the Noticee had the statutory duty to inform SEBI before offering services through its proprietorship concern using his registration number obtained in his personal name. In any case the Noticee has not informed about this material change till SEBI intervened in the matter based on a complaint received from one of the HBJ investors. Therefore, I find that the Noticee violated Regulations 13(b) of the IA Regulations.

20. All things considered, I am convinced that the Noticee as a SEBI registered investment adviser has violated the conditions subject to which he has been granted registration as he knowingly and willingly allowed SEBI prohibited entities HBJ/its directors to use his SEBI Certificate of Registration for carrying out investment advisory services in return of money through his sole proprietary concern OSAR Capital and also failed to inform SEBI about the

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material change in the use of registration certificate.

21. I proceed to consider whether the violation of Regulation 13(a) and (b) of the IA Regulations are sufficient ground for cancellation of the certificate of registration granted to the Noticee. By allowing prohibited entities to provide advisory services in the name of OSAR Capital, the prohibited entities are taking a shelter under the name of OSAR Capital and are instrumental in providing investment advisory services to ex-clients of HBJ/clients of the Noticee. Prohibited entities advising clients in itself is not in the interests of its clients or in the integrity of the market. By providing façade to facilitate this, the Noticee has aided and abetted such entities and thus violated the clauses 1 and 2 of the code of conduct prescribed under the third schedule of IA Regulations. Even though at the first instance it may appear as a mere code of conduct violation, it needs to be seen what is the conduct which is in question that made the Noticee violate this provision. Providing a facade to shelter prohibited entities is a serious violation of code of conduct as it goes to the very root of the conditions of the registration. The interests of the investors cannot be entrusted to such persons who can offer such façade for monetary consideration without any respect for honesty and fairness required from them as per IA Regulations.

22. Stand alone, material change in information by itself may not be serious enough ground warranting the cancellation of certificate of registration. However, given the facts of the case, the enquiry as to why such material change in information was resorted to by the Noticee will indicate that the Noticee resorted to such material change in information for the purpose of providing a façade to the prohibited entities. Given the dishonest purpose which was sought to be achieved by the material change in information, it takes on the serious nature of violation under Regulation 13 (b); thus I consider this case warrants an exemplary action from SEBI by way of cancellation of certificate of registration granted to the Noticee as Investment Adviser.

23. I note that Regulation 23 of the Intermediaries Regulations which is reproduced herein

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below, provides that if a person who is granted a certificate of registration breaches the conditions of registration or the securities laws, action in the manner provided under the Intermediaries Regulations shall be taken:

*"Cancellation or suspension of registration and other actions.*

*Where any person who has been granted a certificate of registration under the Act or regulations made thereunder, –*

*(a) fails to comply with any conditions subject to which a certificate of registration has been granted to him;*

*(b) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;*

*the Board may, without prejudice to any action under the securities laws or directions, instructions or circulars issued thereunder, by order take such action in the manner provided under these regulations".*

24. The violation of the above mentioned code of conduct and material change in information read with Regulation 13(a) and (b) of the IA Regulations go to the root of conditions of registration and therefore the Noticee has violated regulation 23(a) of the Intermediaries Regulations.
25. The various provisions under the SEBI Act, Regulations, Circulars etc. in respect of an intermediary registered with SEBI are enumerated for the purpose of protection of interests of investors. IA Regulations, *inter alia* provide the framework for regulating the activities of entities who are in the business of providing investment advice in respect of securities and investment products. These Regulations seek to create a standardized operating structure within which these entities will operate and also make them duly accountable for their activities by requiring them to comply with the criteria, set out in the relevant provisions of the aforesaid Regulations. Significant responsibilities are entrusted upon the investment advisers registered with SEBI, such as to maintain high standards of integrity, diligence, honesty, and fairness, not to indulge in any act detrimental to the interests of investors, etc.

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SEBI has been entrusted with the important mandate of protecting the investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon it under the securities laws. It is, therefore, necessary that SEBI exercises these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of any of the participants in the securities markets.

26. In view of the gravity of the violations perpetrated by the Noticee as brought out in the foregoing paragraphs, I am of the opinion that he should not be allowed to continue as an Investment Advisor.
27. Accordingly, I am inclined to agree with the recommendation of the DA that the certificate of registration of the Noticee Mr. Amit Baburao Ahire be cancelled.
28. In view of the above, I in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby direct that the Certificate of Registration granted to Mr. Amit Baburao Ahire as an Investment Advisor shall be cancelled forthwith.
29. The above directions shall come into force with immediate effect.
30. The SCN issued against the Noticees is accordingly disposed of.

**DATE: June 27, 2019**

**PLACE: Mumbai**

**MADHABI PURI BUCH  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

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