

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

Noticees	PAN
Ms. Jyoti Kalra, proprietor of Apex Financial Services	DNEPK9527G

In the matter of Unregistered Investment Adviser

1. Present order is being passed in compliance with order dated April 13, 2023 passed by Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**") in Appeal No. 288 of 2023 whereby Hon'ble SAT *inter alia* directed as under:

"5. Considering the aforesaid, while dismissing off the appeal we direct the WTM to reconsider the quantum to be refunded by the appellant. We direct the appellant to file an appropriate application on an affidavit within three weeks from today submitting proof of the fees collected from the clients which is required to be refunded as per the impugned order. Such application shall be considered by the WTM and appropriate order shall be passed within four weeks thereafter."

2. Aforesaid SAT Appeal No. 288 of 2023 was filed by Ms. Jyoti Kalra, sole proprietor of Apex Financial Services (hereinafter individually referred to as "**Ms. Jyoti**" and "**Apex**", respectively and collectively as "**Noticees**") before Hon'ble SAT, challenging the order no. WTM/AB/WRO/WRO/22736/2022-23 dated January 09, 2023 (hereinafter referred to as "**the Final Order**") passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"). The Final Order came to be passed by SEBI in the proceedings emanating from issue of show cause notice dated July 14, 2021 and February 07, 2022 (hereinafter referred to as

“SCN”) issued by SEBI to the aforesaid Noticees wherein *inter alia* it was alleged that the Noticees were engaged in providing unregistered investment advisory services without obtaining registration from SEBI as required under Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act, 1992”) and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “IA Regulations, 2013”). Further, it was alleged that the Noticees used Payumoney account and bank account (account number 910120110000507) held with Bank of India to receive fees from various entities for the purpose of providing such advisory services. The amounts received in Payumoney account were in turn transferred to the Bank of India account of the Noticees. The total amount received in the said bank account during the period June 24, 2014 to February 22, 2018 was alleged to be Rs. 1,11,49,273. The SCN called upon the Noticees to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B(1) of the SEBI Act, 1992 should not be issued against them for the alleged violations.

3. After the aforesaid SCN was issued to the Noticees, an opportunity of hearing was provided to the Noticees by SEBI and thereafter, the Final Order was passed by SEBI issuing the following directions to the Noticees:

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

- a. The Noticees shall within a period of three months from the date of this order, refund the money received from any clients/complainants/ investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;*
- b. The Noticees shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;*
- c. The repayments to the clients/complainants/investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or*

- through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;*
- d. After completing the refund as directed in para 19(a) above, within a period of 15 days, the Noticees shall file a report detailing the amount refunded to SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai - 400051. The report should be duly certified by an independent Chartered Accountant and indicate the amount, mode of payment by banking transactions, name of the parties, communication address, mobile numbers and telephone numbers etc.;*
- e. The remaining balance amount shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/complainants/investors who were availing the investment advisory services from the Noticees. Thereafter, remaining amount if any will be deposited in the Investor Protection and Education Fund maintained by SEBI;*
- f. The Noticees are restrained from selling his assets, properties and holding of mutual funds/shares/securities held by him in demat and physical form except for the sole purpose of making the refunds/ depositing balance amount with SEBI, as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/investors/complainants who were availing the investment advisory services from the Noticees and depositing balance amount with SEBI, as directed in this order, from the bank accounts of the Noticees;*
- g. The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 6 months from the date of this order or till the expiry of 6 months from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in para 19(a) and 19(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 19(f) above shall cease to operate within 15 days thereafter;*
- i. The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 19(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.”

4. Aggrieved by the aforesaid order of SEBI, the Noticees filed Appeal No. 288 of 2023 before Hon'ble SAT. Vide its order dated April 13, 2023, Hon'ble SAT dismissed the appeal and remitted the matter to SEBI to reconsider the quantum to be refunded by the Noticees. Hon'ble SAT also directed the Noticees to file an appropriate application on an affidavit within three weeks from the date of order submitting proof of the fees collected from the clients which is required to be refunded as per the impugned order and directed SEBI to consider the application and pass an appropriate order within four weeks from the receipt of application and proof from the Noticees. The Noticees filed an application on affidavit dated May 02, 2023. Thereafter, the file in the matter was placed before me. A hearing in the matter was also fixed for May 15, 2023. On the date fixed for hearing, Authorised Representative of the Noticees appeared and made submissions of behalf of the Noticees. Vide email dated May 20, 2023, the Noticees filed their written submissions.
5. The Noticees have *inter alia* submitted that the amount of Rs. 1,11,49,273 received *in lieu* of unregistered investment advisory services, as mentioned in the Final Order, is incorrect as the said amount includes entries of self-cash deposit, deposits by relatives and reversal of transactions, etc. The submissions made by the Noticees in their application are as follows:
 - a. Almost entire fee was received through payment gateway viz. Payumoney amounting to Rs. 81,10,827/-. Further, amount received from clients in the form of cash deposits amount to Rs. 2.5 lakhs. The total revenue from unregistered investment advisory were around Rs. 83.50 lakhs. Apart from the aforementioned transactions, there is no receipt of any amount related to the advisory activity in the said bank account and rest of the amount are personal transactions, cash-deposits, reverse entries and unidentified transactions and has nothing to do with investment advisory activity.

- b. Rs. 12,28,864/- have been received from my relative, Shri Ashok Patni. The same is evident from the narration of the bank account and an affidavit in this regard is also attached.
 - c. Rs. 10,900/- have been received from my relative Shri Subodh Jain and the same is evident from the narration in the bank statement.
 - d. There were few self-cash deposits, totalling Rs. 2,46,800/- and few cash deposits made by my friend (Shri Prakashbhai Prajapati) from Halol, totalling Rs. 2,26,400/-, which is evident from the bank statement. The Noticees have provided an email from prakashprajapati0681@gmail.com to support their claim that the cash deposited by Shri Prakashbhai Prajapati was not towards advisory activity.
 - e. There were a few failed transactions along with entries of cheque bounce which were reversed amounting to Rs. 44,050/- which can be verified from the bank statement.
 - f. Apart from these there are few unidentified transactions which however were not part of the advisory activity.
6. I note that w.r.t. the amount received by the Noticees in their bank account, the following has been submitted by the Noticees.

Particulars	Amount (Rs.)	Evidence submitted
Fee received through payment gateway	81,10,827	Affidavit dated May 02, 2023 by Noticee
Fee received in cash	2,50,000	Affidavit dated May 02, 2023 by Noticee
Self-cash deposits	2,46,800	Affidavit dated May 02, 2023 by Noticee
Cash deposit by friend	2,26,400	Email from prakashprajapati0681@gmail.com
Amount deposited by relative, Shri Ashok Patni	12,28,864	Affidavit dated May 01, 2023 by depositor
Amount deposited by relative, Shri Subodh Jain	10,900	No evidence submitted
Reversal transactions	44,050	Affidavit dated May 02, 2023 by Noticee, Narration in bank statement
Unidentified credits	10,31,432	No evidence submitted

Consideration of Submissions and findings:

7. I have considered the order passed by Hon'ble SAT in the matter, application made by the Noticees, submissions made by the Authorised Representative of the Noticees during the hearing held on May 15, 2023 and written submission filed by the Noticees.
8. Before proceeding further, it would be appropriate to mention here that the Final Order was passed against the Noticees. In the said order, it was found that the Noticees were carrying out investment advisory services without obtaining a certificate of registration and, therefore, violated Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013. Various directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 were issued to the Noticees, including the direction to refund an amount of Rs. 1,11,49,273/- to the investors within three months. In the Final Order, the said amount was calculated on the basis of the credits received in the bank account (account number 910120110000507) of the Noticees held with Bank of India.
9. Hon'ble SAT while dismissing the appeal made by the Noticees remitted the matter to SEBI to reconsider the quantum of refund to be made by the Noticees. Therefore, for proper adjudication of the issues at hand, it would be appropriate to understand the background, in which the aforesaid direction came to be issued by the Hon'ble SAT, which is mentioned in para three of the SAT order and reproduced as under:
- “
3. It was urged that the amount directed to be refunded by the WTM is erroneous. In this regard, certain documents have been filed by the appellants to show that the amount collected from the clients towards advisory services was far less than what has been depicted in the impugned order.
..... ”
10. Hon'ble SAT in its order directed the Noticees to file an appropriate application on an affidavit along with proof of the fees collected from the clients. Such application on an affidavit along with the proof of fee is to be considered by SEBI while passing an order in the matter. In this regard, I note that the Noticees have filed an

application on an affidavit and have provided certain documents to prove that certain credits in the bank account of the Noticees were not in the nature of fee, however, the Noticees have not submitted any proof regarding the quantum of fee collected from their clients such as receipts, list of clients etc. With respect to the submissions made by the Noticees, in the present proceedings, I note that the Noticees have identified the certain credit transactions in the statement of Bank of India account (a/c no. 275011100000566), made by the Noticees, their friends and relatives and reversal transactions. With respect to the fee collected by the Noticees, the Noticees have submitted that almost entire fees were received through payment gateway viz. PayUMoney amounting to Rs. 81,10,827/-. The Noticees have also submitted that the amount received from clients in the form of cash deposits amounts to Rs. 2,50,000/-. In this regard, I note that the figure of Rs. 81,10,827 has been mentioned in the SCN as well as the Final Order as fees received through PayUMoney till September 14, 2017. However, credits in the nature of direct bank credits are seen in the bank account of the Noticees before and after September 14, 2017 where the narration includes the word “apex” which shows that fees was being received by the Noticees in the form of direct credits to the bank account as well. The Noticees have neither disclosed the same in her application nor identified the said credits as being fees towards unregistered advisory services. Numerous cash deposits are also seen in the bank statement of the Noticees. While the Noticees have identified the credits claimed to be self-cash deposits and made by friends and relatives in the bank account statement, the Noticees have not identified the cash deposits made by clients. Further, along with the application made by the Noticees, the Noticees have not submitted any list of clients, details of fee (e.g. date, amount, name of client). The Noticees has also not submitted any proof (e.g. receipts, invoices) regarding quantum of fees collected from clients. In absence of any documentary evidence regarding the fees such as receipts issued to clients, client list etc. it is not possible to accept the submission of the Noticees regarding the quantum of fees collected from clients.

11. The Noticees have also submitted an affidavit from Shri Ashok Patni wherein it is stated that he made 43 deposits in the Noticees’ bank account during the period

August 18, 2014 to September 06, 2016 totalling Rs. 12,28,864/-. Shri Ashok Kumar Patni has further stated that the amounts deposited by him had nothing to do with activities of Apex Financial Services and that he does not have any claims pending against the Noticees. Cross referencing the amount, date and name of the depositor as mentioned in the affidavit with Noticees' bank account statement, it is observed that the narration for the said transactions appearing in the bank statement indicate that the said amounts were received from Shri Ashok Patni. In view of the above, it is inferred that the said amount of Rs. 12,28,864/- was not towards fees for unregistered advisory services.

12. The Noticees have also submitted that seven credits totalling Rs. 44,050/- were on account of cheque return/failed transaction and can be verified from the bank statement. In this regard, I note that the said transactions can be identified from the bank account statement. In view of the above, it is inferred that the said amount of Rs. 44,050/- was not towards fees for unregistered advisory services.
13. The Noticees have also submitted in their application that Rs. 10,900 were received on January 19, 2015 from a relative Shri Subodh Jain. However, no evidence/affidavit in this regard has been submitted by the Noticees. The purpose of such transaction has also not been disclosed by the Noticees. Therefore, it is not possible to identify the depositor or the purpose of such deposit made in the Noticees' bank account.
14. The Noticees have also submitted that there were self-cash deposits and cash deposits made by a friend viz. Shri Prakashbhai Prajapati totalling Rs. 4,73,200/-. The Noticees have identified four instances of self-cash deposits totalling Rs. 2,46,800/- in her affidavit dated May 02, 2023. For the cash deposits made by Shri Prakashbhai Prajapati totalling Rs. 2,26,400/-, the Noticees have submitted an email from prakashprajapati0681@gmail.com purportedly on behalf of Shri Prakashbhai Prajapati stating that the said deposits were made by him and had nothing to do with advisory activity. However, the Noticees have not provided any evidence/ affidavit from the depositors in this regard other than the email

mentioned above. Further, from the bank account statement also, the name of the depositor cannot be ascertained. I also note that the Noticees have claimed that they received Rs. 2.5 lakhs as fee in the form of cash deposits. However, the Noticees have not identified the credit entries for such cash receipts. In view of the above, it cannot be ascertained who deposited the said amount (i.e. Rs 2,26,400/-) and whether the said credits were for fees towards advisory services or for some other purpose. Therefore, it is not possible to identify the depositor or the purpose of such deposit made in the Noticees' bank account.

15. I note that in the Final Order, the credits received in the Bank of India account of the Noticees to the tune of Rs. 1,11,49,273/- were treated as fees towards advisory services received by the Noticees. The Noticees have submitted that the total fee received by them through PayUMoney payment gateway and cash deposits is Rs. 83.50 lakhs. However, as mentioned earlier, the Noticees have not provided any proof in support of the same even though Hon'ble SAT directed the Noticees to do the same. Further, there were direct credits in the bank account of the Noticees which the Noticees have failed to disclose in their application. In view of the same, the submission of the Noticees cannot be accepted, in toto. The Noticees have also submitted that there are certain unidentified credits in the Bank of India account. The said unidentified credits have neither been identified by the Noticees nor any explanation or proof regarding the nature of such credits has been provided by the Noticees. However, in view of the submissions made by the Noticees in their application and the documents/evidence produced, it can be inferred that out of the total Rs. 1,11,49,273 received by the Noticees in their Bank of India account, an amount of Rs. 15,19,714/- (i.e. Rs. 12,28,864 + 44,050 + 2,26,400) was not towards advisory fees for unregistered investment advisory activity. Therefore, the actual amount received by the Noticees towards fees for unregistered advisory services comes to Rs. 96,29,559/- (i.e. Rs. 1,11,49,273/- less Rs. 15,19,714/-).

16. I note that in terms of the Final Order, the Noticees were *inter alia* directed to refund the money received from clients/complainants/investors as fee or consideration or in any other form towards the advisory services provided by the Noticees. The

Noticees were also directed to file a report, duly certified by an independent Chartered Accountant, detailing the amount refunded. In view of the above, the Noticees are at liberty to provide necessary proof in support of their claims regarding credits in the bank account of the Noticees, to the independent Chartered Accountant and the same may be considered by the independent Chartered Accountant while certifying the refunds made by the Noticees.

17. In view of the aforesaid, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992 read with Section 19 thereof, hereby direct that the amount of refund in terms of Para 19(a) of the Final Order shall be Rs. 96,29,559/-. Except the amount to be refunded, as modified by this order, all other directions given in the Final Order remain unchanged.
18. The direction given in para 17 above does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.
19. This order comes into force with immediate effect.
20. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

Date: May 30, 2023

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA