

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

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

IN RESPECT OF:

S. No.	NOTICEE	PAN
1.	FINASSURE FINANCIAL SERVICES PVT. LTD.	AACCF3263B
2.	AMIT SHARMA	APBPS4851H

(The aforesaid entities are hereinafter referred to by their respective names /Noticee numbers and collectively as the “**Noticees**”).

IN THE MATTER OF FINASSURE FINANCIAL SERVICES PVT. LTD.

BACKGROUND:

1. Securities and Exchange Board of India (“**SEBI**”) had issued an Order (Order no. WTM/ASB/WRO/WRO/23472/2022–23), against Finassure Financial Services Pvt. Ltd. (“**Finassure /the Company**”) and its Director, Amit Sharma (“**Noticee 2**”), on February 2, 2023 (“**Final Order**”), for violating the provisions of the SEBI Act, 1992 (“**SEBI Act**”) and the SEBI (Investment Advisers) Regulations, 2015 (“**IA Regulations**”), on account of having carried out unregistered investment advisory activities. Additionally, vide the Final Order, SEBI had issued directions against Saket Sharma, another Director of Finassure, for facilitating the unregistered investment advisory activities carried out by the Company and Noticee 2.
2. Vide the Final Order, SEBI had *inter alia* directed as under:

*“**Finassure and Amit Sharma** shall within a period of three (3) months from the date of coming into force of this Order, jointly and severally, refund the money received from investors /clients, as fees or consideration or in any other form, in respect of unregistered investment advisory activities.*”

...

Finassure and Amit Sharma are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of **three (3) years** from the date of this Order or till the expiry of three (3) years from the date of completion of refunds to clients/ investors as directed ... above, whichever is later.

...

Saket Sharma is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of **one (1) year** from the date of this Order.”

3. The Company /Noticee 1 along with Amit Sharma /Noticee 2, had filed an Appeal against the Final Order (**Appeal No. 283 of 2023**), before the Hon’ble Securities Appellate Tribunal (“**SAT**”). The SAT disposed of the Appeal vide its Order dated March 20, 2023 (“**SAT Order**”), observing:

“2. We find that the impugned order was passed ex–parte without serving the show cause notice. In this regard upon a perusal of the impugned order we find that an attempt was made by the respondent to serve the show cause notice at the wrong address. This fact is admitted by the respondent.

3. In view of the aforesaid, the impugned order, being an Ex Parte Order, cannot be sustained as no opportunity of hearing was given to the appellants and is quashed. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order in accordance with law. In this regard, the appellants will appear before the WTM on April 10, 2023 on which date the appellants will be served with the show cause notice and the matter will proceed from there onwards in accordance with law. The misc. application is disposed of accordingly.”

4. In compliance with the SAT Order, Noticees 1 and 2 were served with a copy of the Show Cause Notice (“**SCN**”) on April 10, 2023. Subsequently, an opportunity of hearing was granted by SEBI, to the said Noticees on October 5, 2023 and

December 5, 2023. Noticee 2, Amit Sharma, however, had requested for an adjournment, which was granted by SEBI. Thereafter, an opportunity of hearing was granted to the said Noticees on March 21, 2024. Noticee 2 was represented by Advocate, Kunal Kataria, who made submissions on the lines of the reply dated June 1, 2023, which was earlier filed by the said Noticee.

CONSIDERATION

5. Before I proceed to deal with the submissions /contentions advanced by Noticee 2 on merit, the following facts as contained in the SCN are reproduced herein:
 - A. A complaint dated December 31, 2015, was received at SEBI, against Finassure, from Gopal Kumar (“**Complainant**”), *inter alia* alleging that he had registered with the Company, for trading advisory services.
 - B. The webpages of Finassure’s website, www.ffsplbuysellsoftware.in, (the website is no longer active), showed the various alleged advisory services /packages being offered by the Company along with the details of its bank account (ICICI Bank A/c no. 091605500364), to which payments could be made. Further, in the ‘Who we are’ section of the website, an *Introduction* was seen wherein it was stated: “FFSPLBUYSELLSOFTWARE.IN, a division of Finassure is among very few in developing most unique advance and accurate automatic buy sell signal software for Technical Analysis with Target and Stop Loss for Intraday trades.”
 - C. The stated goal, mission and vision statement as available on the website was to “*help Indian traders and investors achieve above–average returns from the markets by providing them with profitable trading signals and at the same time protect their trading capital.*”
6. Accordingly, in view of the above, as per the SCN, the Noticees along with Saket Sharma, were alleged to have violated Section 12(1) of the SEBI Act and Regulation 3(1) of the IA Regulations, on account of having carried out

unregistered investment advisory activities. The aforementioned provisions are reproduced below:

SEBI Act

Section 12 (1) – Registration of stock brokers, sub-brokers, share transfer agents, etc.

“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.”

IA Regulations

Regulation 3(1) *“On and from the commencement of these regulations, 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 the Board under these regulations.”*

7. Vide a reply dated June 1, 2023, Noticee 2, Amit Sharma, had *inter alia* submitted:
 - a. *The company Finassure of which I was a Director and majority shareholder is no longer in existence and has been struck off the record of the Register of Companies by the Registrar of Companies w.e.f. 2017. Finassure is now defunct and had ceased all business operations since November 2016. I no longer have access to all the records of the Company to respond to the same.*
 - b. *Providing advice is a sine qua non for the purpose of the activity to come within the scope of the IA Regulations. I had never provided any investment advice to any client. The service which is alleged to be in violation of the IA Regulations never constituted advice but in fact was only a software tool developed by me. Finassure used to charge a license fee for accessing the said software tool and such access cannot amount to investment advice.*

- c. *The complainant, Gopal Kumar, had subscribed for online access to the technical and analytical software tool, “FFSPL Buy Sell Software”, offered by Finassure. In his complaint, he had stated that the software was not working.*
- d. *It is stated that the software was not designed to render any stock specific advice. The strategies that were underlying the software tool, both data-based and chart-based were ‘stock-agnostic’ and not ‘stock-specific’. The software tool only gives indications or outputs results based on the technical and financial parameters opted by the customer. Secondly, choice of any strategies whether data based or chart based (such as stock cash, stock future, commodity and flexible duration) was also exclusively the choice of our customers without any advice or interference from either myself or Finassure.*
- e. *It is incorrect that the complainant, Gopal Kumar, was registered with Finassure for ‘trading advisory services’ such as ‘tips’ or ‘recommendations’ or ‘suggestions’ and in fact, it is borne out by the absence of any of the narrations such as but not limited to ‘investment tips /advice /suggestions /recommendations’ across the bank statement of Finassure.*
- f. *The customers retained their prerogative to transact by themselves in accordance with their calculations and strategies in each segment (such as stock cash, stock future, commodity and flexible duration) without Finassure’s involvement and the Company never gave any stock /contract specific recommendation or target price or selected anything for a customer.*
- g. *I would like to clarify that in the annexure to the SCN, the website of Finassure mentions a page (viz. page no.9 to 16) wherein it is mentioned that the Company was charging for the following:*
 - i. *Chart-based pricing: This refers to granting a customer access to live charts with various technical indicators, candlestick patterns, price patterns, economic data, free and coded strategies based on the segment of the customer's choice (such as ‘stock cash’, ‘stock future’, ‘commodities’, ‘flexible duration’) and this access was initially offered on a time-limit basis (such as monthly /quarterly /yearly). This never constituted giving of any advice by way of ‘tips’ or ‘recommendations’ as the stocks /scrips to be monitored by each customer was privately*

- selected in a password-controlled interface with no involvement by either myself or anyone at Finassure.*
- ii. Expert call pricing: This refers to granting a customer access to calculators and scanners, both cloud-based, through Google sheets and in some cases through Excel sheets.*
 - h. I would like to add that the SCN at page 9 had extracted the contact form which was the form by which our customers used to send enquiries to Finassure. In this connection, I would like to illustrate the following aspects of the Company's business operations, namely,*
 - i. the customers were aware that the software tool offering that was made available by Finassure was a software calculator and used to enquire about accessing the same,*
 - ii. the customers were aware that segments such as 'nifty futures' and 'stocks' and other products mentioned in the SCN were calculator programs and not 'tips' or 'recommendations' or 'advice' and*
 - iii. the routine enquiries used to be for demo and assistance in the performance of the software, addition of different indicators and clarifications on web or computer based nature of the software, all of which point to the fact that Finassure essentially provided a software analytical programmable calculator for private individual usage under confidential user IDs and passwords without any interference or advice or tips or recommendations being ever given to any customer.*
 - i. I was also registered with AMFI and therefore, as per the IA Regulations, I was exempted from registering myself under the said Regulations.*

FINDINGS

- 8.** It has been alleged in the SCN that Finassure through its website, www.ffsplbuysellsoftware.in, was providing unregistered investment advisory services in violation of Section 12 (1) of the SEBI Act and Regulation 3(1) of the SEBI (IA) Regulations. In this context, reference is made to the 'What we do' section of the website wherein it was stated:

"AUTOMATIC BUY SELL SOFTWARE aims at providing the best in class commodity market solutions that help businesses and individuals grow

revenue, generate profits, and manage businesses to run more efficiently and in a sustainable way. By exploring the proper usage of company's services and tools, every person can effectively can earn money from the biggest financial plot of the country.

....

Under able leadership of spirited management Team, AUTOMATIC BUY SELL SOFTWARE employs reliable, proven and sophisticated techniques to deliver Buy Sell Signal which seamlessly integrate with multiple advanced Charting and renowned International Technical Platforms like AmiBroker. The company's focus is to deliver authentic and accurate Buy and Sell signal to their clients – at affordable price. AUTOMATIC BUY SELL SOFTWARE distributes low latency, Buy Sell Signal with Stop Loss and Targets.” (emphasis supplied)

9. In this regard, apart from the facts reproduced at paragraph 5 above, it is noted from the material available on record that Finassure's website showed that the Company was offering packages /services such as *Elite Trade, Profit Buzz, Stock Future Economy, Crude 200, Commodity, Options, Bullions Economy, etc.*
10. In his reply, Noticee 2 submitted that the *Buy Sell Software* offered by the Company /Finassure through its website admittedly was a *cloud based software (can also be used on mobile phones), which fast-loaded live charts customised using technical indicator super trend with pre-defined Automated Buy & Sell Signal as an inbuilt feature of the indicator. Super Trend is an open-source indicator available in almost all charting software. Need-based charges (are collected) based on Strategy (provided by the Customer or pre-defined like Elite, F1P, as mentioned on the website) & Segment (Stock Cash, NCDEX, MCX) for different time period, etc.*
11. Noticee 2 has submitted that Finassure also provided *inter alia* services such as *mutual fund portfolio advisory services, general and health insurance services, NISM and IRDA examination preparation, google finance sheet & excel calculator, etc.* Screen-grabs of the website containing the aforesaid services were also submitted to SEBI.

12. Upon a consideration of the preceding paragraphs, I note that the question that requires determination in the instant matter concerns the nature of the recommendations being provided by the software offered by the Noticees. It is the Noticees' case that the software provided technical indicators which helped investors in taking a trading decision. For the charge of providing unregistered investment advisory services to sustain, it has to be shown that the software would be recommending the names of specific scrips based on which clients would take /make trading decisions.
13. I note from the records that one complaint as received from a client of the Noticee was referred to in the SCN. It would be helpful to look at the text of the complaint to better understand the nature of the output provided by the software package offered by Finassure. As per the complainant, *"(he) registered with (the) Company for trading advisory services through Software but since (he) had joined their services, their software (did) not work and when (he) had called advisory Company they (did) not take (his) call. (He) had requested for refund of Rs. 3000 but (the Company was) not responding. (He wanted SEBI) to take action against such company and get (his) money refunded. Company website add: www.ffsplbuysellsoftware.in and Mob:9039090198 and 8718888822."*
14. It can be noted from the above that the complaint was with regard to the issues related to the working of the software offered by the Company. The nature of the recommendations made by the software is not addressed in the complaint. It is further noted that even the screen-grabs of the website, referred to earlier, or the descriptions available on the website, do not provide any answers to this question.
15. In this regard, reference is made to Regulation 2(1)(l) of the IA Regulations, which defines 'investment advice' as:
- "advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:*

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations.”

16. Having regard to the preceding paragraphs, I am constrained to note that the material available on record is not sufficient to arrive at a determination that the software tool /package offered by the Noticees did indeed provide stock recommendations in the nature of ‘investment advice’ in terms of Regulation 2(1)(l) of the IA Regulations.
17. The allegations contained in the SCN issued against the Noticees in these proceedings, were on the basis of the material available on record including the screen-grabs of the Company’s website. The SCN was issued on August 5, 2021, to all the Noticees. As no reply was received to the SCN at that point in time, the matter was proceeded *ex parte* on the basis of the material available on record and subsequently, the Final Order was passed. In this context, the Hon’ble SAT vide its Order dated March 20, 2023, had observed that the SCN was not served on Noticees 1 and 2. Pursuant to the aforesaid SAT Order, Noticee 2 had filed his reply in the matter and was also afforded an opportunity of hearing. As detailed in the preceding paragraphs, the documents relied upon by SEBI in the instant proceedings when considered against the material contained in the reply filed by Noticee 2, do not establish the allegations leveled against the Noticees, in the SCN.
18. Additionally, I find that the allegations against Saket Sharma, another Director of Finassure, who vide the Final Order was found to have facilitated the unregistered investment advisory activities carried out by the Company and Noticee 2, would also not hold in view of the findings in the preceding paragraphs.

ORDER

- 19.** In view of the above mentioned findings and having regard to the facts and circumstances of the matter, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4) and 11B(1) of the SEBI Act, hereby dispose of the proceedings initiated vide the SCN dated August 5, 2021, against Finassure Financial Services Pvt. Ltd., Amit Sharma and Saket Sharma without issuance of any directions.
- 20.** This Order comes into force with immediate effect.
- 21.** This Order shall be served on the Noticees, Saket Sharma, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Date: July 1, 2024
Place: Mumbai

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA