

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(4), 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN RESPECT OF SRI SUNIL LAXMAN KALE (SUB-BROKER REG. NO. INS233483614 AND INS013450411)

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") noticed that Trendline Traders Academy (hereinafter referred to as "Trendline") has issued advertisement in Sakal newspaper (a Marathi newspaper) dated April 28, 2013 claiming to double the money invested by an investor through it in a year's time. In order to ascertain as to whether the activities advertised by Trendline were attracting/violating the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act") and regulations made thereunder, SEBI undertook examination in the matter.
2. On examination, it was *inter alia* observed that:
 - (a). Sri Sunil Laxman Kale is the founder/director of Trendline;
 - (b). Sri Sunil Laxman Kale is registered with SEBI as a sub-broker (Sub-broker Registration Nos. INS233483614 and INS013450411) of the stock-broker, India Infoline Ltd. (hereinafter referred to as "IIFL");
 - (c). the hyperlink www.sunilkale.com mentioned in the advertisement published in the newspaper redirects to www.realtime-trading-system.com (hereinafter referred to as "the website");
 - (d). some of the contents published on the website are as under:
 - *For availing the services minimum required capital is ₹10 lac with a minimum investment period will be one year.*
 - *The account will be managed by Sri Sunil Kale who is creator of 'Realtime Trading System' software.*
 - *We have full trust on our client, so our PMS is different from other.*
 - *Your capital will be with you, in your own account. If you have no account with us, you have to open your account with us.*
 - *We have authorized franchisee of India Infoline Ltd. You will have your account with India Infoline Ltd.*
 - *We want your account with us because it will be easy to manage, control the same at realtime.*
 - *We (not India Infoline Ltd.) will control, manage your account at 100% of time.*
 - *You will get all facilities, benefits of account holder, but you will not trade in the same.*

- *Your returns will be unlimited at upper end, you will get atleast 50% at lower end in one year. We will 50% partner of you. We will not only share profit, we will share your loss also. This gives guarantee of our efforts. We will work as 'Personal Finance Manager' for you.*
 - (e). a guaranteed return scheme was being offered by Sri Sunil Laxman Kale and Trendline to their clients;
 - (f). the services offered by Sri Sunil Laxman Kale and Trendline are in the nature of portfolio management services relating to funds; and
 - (g). as per SEBI records, neither Sri Sunil Laxman Kale nor Trendline has obtained certificate of registration to act as a portfolio manager as required in terms of section 12(1) of the Act read with regulation 3 of the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 (hereinafter referred to as "the Regulations")
3. It was observed that activities advertised by Sri Sunil Laxman Kale and Trendline attract the provisions of section 12(1) of the Act read with regulation 3 of the Regulations for offering the portfolio management services without seeking the requisite registration under the Act and the Regulations. Accordingly, vide letter dated May 28, 2013 SEBI sought comments from Sri Sunil Laxman Kale regarding contents of the advertisement in the newspaper and on the website. However, he failed to reply to the said SEBI letter.
 4. Sri Sunil Laxman Kale has admitted before SEBI that he was not registered with SEBI for providing the portfolio management services and that the contents of the advertisement and the website were published by mistake. He has also stated that he had not provided any PMS to any client/individual and if any such claim is made in the future he would be responsible for the same. Further, in his email to SEBI dated August 17, 2013, Sri Sunil Laxman Kale has submitted that all this happened due to the lack of understanding of the SEBI rules and regulations on his part.
 5. Sri Sunil Laxman Kale has not replied to the said letter of SEBI. Vide letter dated May 28, 2013 SEBI also sought comments of IIFL in this regard. IIFL has, in its reply dated June 05, 2013, *inter alia*, informed SEBI that it had sought explanation from Sri Sunil Laxman Kale regarding the complaint and content pertaining to the portfolio management services offered through the website. It is also informed by IIFL that in reply to the said letter, Sri Sunil Laxman Kale has stated that the matter was published on the website by mistake. Further, Sri Sunil Laxman Kale assured IIFL to remove the said content from the website. Sri Sunil Laxman Kale also submitted that even though the claims regarding portfolio management services were made on the aforementioned website, neither he nor Trendline had provided any such service to any person or client. It is noted that the said content had been removed from the website after his assurance. Further, IIFL has requested the National Stock Exchange of India Limited and the Bombay Stock Exchange Limited for cancellation of registration of Sri Sunil Laxman Kale as its sub-broker and has issued communiqué to its clients stating *inter alia* termination of its association with Sri Sunil Laxman Kale.

6. In view of the aforesaid, I find that Trendline and its founder/director Sri Sunil Laxman Kale were soliciting the general public to entrust their funds and securities to them and offering portfolio management and advisory services without obtaining the certificate of registration from SEBI to act as a portfolio manager as required under section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act") read with the Portfolio Managers Regulations. The relevant provisions of the Act and the Regulations are reproduced as following:-

"SEBI Act, 1992

Section 12(1) –

"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."

SEBI (Portfolio Managers) Regulations, 1993

Regulation 3 –

"No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations:"

7. I, therefore, find that Sri Sunil Laxman Kale and Trendline have violated the provisions of section 12(1) of the Act read with regulation 3 of the Portfolio Managers Regulations.
8. I further note that Sri Sunil Laxman Kale and Trendline have made known misrepresentations by making unrealistic claims, and they have also made representation in reckless and careless manner in their advertisement and website and have suggested facts which are not true. By their acts and omissions they have solicited, enticed and induced investors to deal in securities. In my view the *modus operandi* of Sri Sunil Laxman Kale and Trendline indicates a scheme, plan, device or artifice or contrivance that is, besides being in contraventions of the Act and the Regulations as discussed above, is 'fraudulent' as defined in regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "the PFUTP Regulations") which reads as under:-

Definition of 'fraud' – Regulation 2(1)(c).

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

- (3) *an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) *a promise made without any intention of performing it;*
- (5) *a representation made in a reckless and careless manner whether it be true or false;*
- (6) *any such act or omission as any other law specifically declares to be fraudulent;*
- (7) *deceptive behaviour by a person depriving another of informed consent or full participation;*
- (8) *a false statement made without reasonable ground for believing it to be true;*
- (9) *the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

And "fraudulent" shall be construed accordingly;

.....”

9. In light of the aforesaid observations, I further note that Sri Sunil Laxman Kale and Trendline not only contravened the provisions of the Act and the Portfolio Managers Regulations but have also acted in fraudulent and deceitful manner which attracts prohibitions enshrined in section 12A (a) (b) and (c) of the Act and regulation 3 (b), (c) and (d) and regulation 4(1) and 4(2) (k) of the PFUTP Regulations which read as following:-

Section 12A of the SEBI Act-

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

- (a) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"*

Regulation 3 of the PFUTP Regulations -

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a).....

.....

- (b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under."

"4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

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.....

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

....."

10. Since the conduct of Sri Sunil Laxman Kale and Trendline is not in the interest of investors in the securities market, necessary action has to be taken against them immediately, else it may lead to loss of investor's trust in the securities market. I find that Sri Sunil Laxman Kale and Trendline made unrealistic claims of unlimited returns on the website as discussed earlier and by nature of his acts and omissions, he tried to solicit, entice and induce investors to deal in securities. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of the investors and protect the integrity of the securities market. I am convinced that this is a case where effective and expeditious action is required to be taken not only to prevent any further harm to investors but also to send a stern message to prevent any person from indulging in acts as observed in this case.
11. In view of the aforesaid findings, I, in exercise of powers conferred upon me by virtue of section 19 read with sections 11(1), 11(4), 11B and 11D of the SEBI Act by way of this *ex-parte* order hereby issue the following directions:
- i. Sri Sunil Laxman Kale (PAN: ACQPK9325A) and Trendline are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner;
 - ii. Sri Sunil Laxman Kale and Trendline shall cease and desist from undertaking the portfolio management activities or any unregistered activity in the securities market, directly or indirectly, in any manner whatsoever;
 - iii. Sri Sunil Laxman Kale and Trendline shall immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to the portfolio management activities or any unregistered activity in the securities market; and

- iv. Sri Sunil Laxman Kale and Trendline are prohibited from mobilizing funds from the public or offering any portfolio management activities, in whatever form.
12. Sri Sunil Laxman Kale and Trendline may file their objections, if any, within twenty one days from the date of this Order and, if they so desire, may avail themselves of an opportunity of personal hearing before the Securities and Exchange Board of India at its Head Office at SEBI Bhavan, C4-A, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051 on a date and time to be fixed on a specific request, to be received in this behalf from them.
13. A copy of this order shall be forwarded to all the Stock Exchanges, the Depositories and IIFL to ensure that the directions given in Para above are strictly complied with.
14. The above order is without prejudice to the right of SEBI to take any other action that may be initiated against Sri Sunil Laxman Kale and Trendline in accordance with the law.
15. This Order shall come into force with immediate effect.

DATE: NOVEMBER 18th , 2013
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA