

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

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

IN RESPECT OF –

NAME	PAN
MANISH LALWANI, PROPRIETOR – SECURE INVESTOR INVESTMENT ADVISORY	AGCPL2573P

IN THE MATTER OF SECURE INVESTOR INVESTMENT ADVISORY.

BACKGROUND

1. The present proceedings emanate from a complaint dated June 7, 2017 and three separate complaints dated June 08, 2017, June 14, 2017 and July 04, 2017, against Manish Lalwani, Proprietor–Secure Investor Investment Advisory (“**Noticee**”), as received by Securities and Exchange Board of India (“**SEBI**”) from Surendra Yadav on the SEBI Complaints Redress System (“**SCORES**”). Vide the aforementioned complaints, the complainant had alleged that he had not received any invoice or advisory services from the Noticee despite having paid an amount of ₹11,64,000 to the Noticee.
2. SEBI forwarded a copy of the above mentioned complaints to the Special Task Force, Madhya Pradesh Police vide a letter dated October 15, 2018. Simultaneously, SEBI conducted an examination in the matter and thereafter, issued a *Show Cause Notice dated September 14, 2021* (“**SCN**”), against the Noticee on the basis of findings contained in the examination report, *inter alia* alleging that:
 - i. The Noticee carried out investment advisory activities and held himself out as ‘*Investment Adviser*’ without obtaining a Certificate of registration from SEBI in violation of the provisions of Section 12(1) of the SEBI Act, 1992

(“**SEBI Act**”) read with Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (“**Investment Advisers Regulations**”).

3. Vide the SCN, the Noticee was also called upon to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, should not be issued against him for the violations alleged in the SCN. The Noticee replied to the SCN vide a letter dated February 24, 2022.
4. Thereafter, an opportunity of hearing was granted to the Noticee on July 14, 2022. The Noticee appeared for the hearing through his authorised representative, Abhishek Mishra, who made oral submissions in line with the reply filed to the SCN.

FINDINGS:

- 5.1 I have considered the SCN, the reply submitted by the Noticee along with all the material available on record. As per the SCN, the Noticee is alleged to have held himself out as an ‘*Investment Adviser*’ without obtaining registration from SEBI in violation of the provisions of Section 12(1) of the SEBI Act read with Regulation 3(1) of the Investment Advisers Regulations. The aforementioned provisions of law read as under:

Provisions of the SEBI Act:

“Section 12 of the SEBI Act – Registration of stock brokers, sub-brokers, share transfer agents, etc.

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:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a 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 immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.”

Provisions of the Investment Advisers Regulations:

“Regulation 3 of the Investment Advisers Regulations – Application for grant of certificate.

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:”

5.2 In his reply, the Noticee submitted as under:

- a. *Being the sole proprietor of Secure Investor Investment Advisory, I started the operations by opening a bank account in ICICI Bank on August 2, 2016 and the first fee from a client was received on August 24, 2016. I had also created a website, www.secureinvestor.in through which business was done.*
- b. *I used to charge fees from clients only after they had made profits using the tips provided by me.*
- c. *The business was running smoothly for close to eleven months until I became aware of the requirement to get registered with SEBI under the*

Investment Advisers Regulations somewhere in June 2017. Subsequent to the aforesaid, I took steps to close down the business.

- d. I admit the fact that I was involved in the activities without obtaining registration from SEBI in accordance with the provisions of the SEBI Act and Investment Advisers Regulations. I did shut my business as soon as I became aware of such requirement. I had also closed down the above mentioned bank account and website. However, it was on account of ignorance of such requirement that the mistake of carrying on the business was committed.*
- e. I had no intention of committing any fraud or crime and none of my client(s) had faced losses or raised any type of complaint barring Surendra Yadav, which complaint was also resolved.*
- f. The details of complaints of Surendra Yadav as mentioned in the SCN was duly resolved and I was declared exculpated by the Judicial Magistrate of First Class, Indore. Copy of the same is enclosed.*
- g. I had refunded the complainant, a hefty amount of ₹10,00,000 as settlement on October 5, 2018 (Copy of the Mutual Agreement is also enclosed).*
- h. The amount collected by Secure Investor Investment Advisory is lesser than the amount mentioned in the SCN as there were several personal deposits in the accounts, which were not related to the business. Further, while the SCN had mentioned the credit entries, there was no reference to the debit entries which also included the expenses incurred while running a business such as employee salaries, rental cost for office premises, etc.*
- i. The net revenue can also be verified through the Income Tax Returns filed by me during that duration, which is also enclosed.*

5.3 From the material available on record, the following is observed:

- i. The Noticee's website www.secureinvestor.in (the website is no longer active; however, archived pages of the website were downloaded from web.archive.org), contained the following information:*

a. *“Secure Investor Investment offers advisory tips which basically provided excellent equity, commodity and forex services. In this service, we provide stock futures calls with a high level of accuracy ... in order to give stock future tips for all our clients and make sure that (they) make huge profits through (their) investments...”*

b. *The following products /services were made available on the Noticee’s website, to prospective clients /investors:*

➤ *Equity:*

- *Stock Cash: Stock Cash Tips, Stock Cash Premium, BTST Cash, Stock Cash HNI.*
- *Stock Futures: Stock Future Tips, Stock Future Premium, BTST Future, Delivery Pack, Stock Future HNI, FastTrack Service, Special Future Service.*
- *Stock Options: Stock Options Tips, Stock Option Premium, BTST Option, Stock Option HNI.*
- *Index: Nifty Future Tips, Index Options, Nifty Future Tips.*

➤ *Commodity:*

- *Commodity HNI Bullion, Commodity Agri, Base Metal Premium*

➤ *Combo Service:*

- *MCX, Bullion + Energy, Combo (Cash + Future)*

c. Through the website www.secureinvestor.in, the Noticee offered prospective clients /investors, various subscription packages relating to recommendations for stocks in cash, futures and option, etc. An illustration of the pricing details for some of the services offered, for periods ranging from one month to a year, is reproduced below:

➤ *Stock Option Tips*

<i>1 Month</i>	<i>–</i>	<i>7000/-</i>
<i>3 Month</i>	<i>–</i>	<i>18000/-</i>
<i>6 Month</i>	<i>–</i>	<i>30000/-</i>
<i>12 Month</i>	<i>–</i>	<i>50000/-</i>

5.4 Payment for the services offered by the Noticee could be made at the ICICI Bank Account No. 388005500025. From the Account Opening Form and Know Your Client (“KYC”) documents received from ICICI Bank, it is observed that:

- a. the Noticee was the authorised signatory to access and operate the said bank account;
- b. the nature of business was recorded as ‘Share Market Services’.
- c. the total credits received in the aforesaid bank account for the period from August 8, 2016 to July 11, 2017 amounted to **₹41,74,870.82**, as under:

BANK	AS PER THE ACCOUNT OPENING FORM, AUTHORISED SIGNATORY TO ACCESS AND OPERATE THE A/C	AMOUNT IN ₹
ICICI BANK ACCOUNT NO. 388005500025 NEW SIYAGANJ BRANCH.	MANISH LALWANI	*41,74,870.82
*THIS ALSO INCLUDED AMOUNTS RECEIVED FROM THE COMPLAINANT.		

5.5 Further, the Industrial License granted to the Noticee, by the concerned Nagar Palika Nigam, Indore, Madhya Pradesh (the aforementioned was part of the KYC documents submitted to ICICI Bank), had a validity period of one year i.e. from April 1, 2016 to March 31, 2017.

5.6 The definition as given in Regulation 2(m) of the Investment Advisers Regulations states that ‘Investment Adviser’ shall mean “any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an Investment Adviser, by whatever name called”. Further, Regulation 2(l) of the Investment Advisers Regulations 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.”

5.7 In his reply, the Noticee admittedly started offering investment advisory services as the sole proprietor of Secure Investor Investment Advisory, without having obtained a Certificate of registration from SEBI with effect from August 2, 2016. The Noticee admittedly created a website, www.secureinvestor.in for offering the said services to prospective clients /investors and the first fee was received from the client on August 24, 2016. These admissions when viewed in light of the observations contained in the preceding paragraphs and the definitions therein lead me to conclude that the Noticee had, for the period from August 2016 to July 2017, held himself out as ‘*Investment Adviser*’ by offering to give ‘*Investment Advice*’ related to investing in, purchasing and selling of securities in lieu of consideration received from prospective investors /clients through various investment packages offered for subscription on the aforementioned website.

5.8 Section 12(1) of the SEBI Act *inter alia* provides that no Investment Adviser shall buy, sell or deal in securities except under, and in accordance with, the conditions of a Certificate of registration obtained from the Board. Further, Regulation 3(1) of the Investment Advisers Regulations provides that no person shall act as an Investment Adviser or hold himself out as an Investment Adviser unless he has obtained a Certificate of Registration from the Board. It is pertinent to mention that the Noticee was never registered with SEBI, in any capacity as an intermediary. By operating as ‘*Investment Adviser*’ as defined under Regulation 2(m) of the Investment Advisers Regulations, without obtaining registration from SEBI, I find that the Noticee violated Section 12(1) of SEBI Act read with Regulation 3(1) of the Investment Advisers Regulations.

5.9 Incidentally, I note that enforcement proceedings have also been initiated by SEBI, against the Noticee, for carrying out unregistered investment advisory services through his proprietary firm, Capital Yield Research and WTM /ASB /WRO/WRO/22919/ 2022–23 was issued by SEBI on January 18, 2023. The

aforesaid has been considered while determining the directions issued in these proceedings.

- 6.1 The SCN had *inter alia* called upon the Noticee to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, should not be issued against him. In the instant proceedings, the amount of fees /consideration collected by the Noticee as a result of providing unregistered '*Investment Advice*' to investors, amounted to **₹41,74,870.82**.
- 6.2 In his reply, the Noticee has contended that the amounts collected were lesser than the amount mentioned in the SCN as (a) *there were several personal deposits in the accounts, which were not related to the business as is also borne out from the Income Tax Return* and (b) *there was no reference to the debit entries which also included the expenses incurred while running a business such as employee salaries, rental cost for office premises, etc.* I am not inclined to accept the Noticee's submission since the amounts collected by him were through investment advisory activities without SEBI registration and could not have been utilised for any purpose other than refunding such amounts back to the clients. Further, the Income Tax Return submitted by the Noticee to substantiate the income earned from business pertained to the Assessment Year 2016–17, which was prior to the unregistered investment activities carried out by him i.e. Financial Year 2015–16.
- 6.3 The Noticee submitted that an amount of ₹10,00,000 was paid to the complainant towards settlement of his grievance. A copy of the Mutual Agreement dated October 5, 2018 entered into between the Noticee and Surendra Yadav was submitted as proof of the settlement arrived at by him with the said complainant. Upon a perusal of the aforesaid Agreement, I note that the amount stated in the payment Schedule was ₹10,00,000 (period of payment was from October 2018 to July 2019) contrary to the complainant's assertion of having made a payment of ₹11,64,000, to the Noticee. However, I note that the Noticee had also enclosed a copy of an Order in Case No. RCT/9623/2018 dated December 17, 2019, passed by the Magistrate – First Class, Indore, a perusal of which reveals that the Magistrate had accepted the application for

compounding of offences under Section 320(2) of the Code of Criminal Procedure, 1973 (“CrPC”), jointly filed by the Noticee and the Complainant. Further, I note that there are no pending complaints against the Noticee either on SCORES or received physically by SEBI. Having regard to the aforementioned, the amount of ₹10,00,000, has been taken into account while computing the refund obligation of the Noticee in these proceedings.

- 6.4 In light of the findings in the preceding paragraphs, I am of the considered view that the Noticee is liable to refund an amount of **₹31,74,870.82** collected as fees in lieu of unregistered ‘*Investment Advice*’ offered to its clients /investors, and accordingly, a direction to the Noticee to refund such amount will be in the interest of investors in the securities market. I however, note that the SCN does not identify any particular investor or any specific group of investors who have suffered losses due to unauthorized activity carried out by the Noticee.

ORDER:

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

- (a) The Noticee, **Manish Lalwani, Proprietor–Secure Investor Investment Advisory**, shall within a period of three months from the date of coming into force of this Order, refund the money received from any complainants /investors /clients, as fees /consideration or in any other form, in respect of its unregistered investment advisory activities.
- (b) The Noticee shall cause to effect a public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, inviting claims from Complainants /investors /clients within a period of fifteen (15) days from the date of this Order. The said public notice shall detail the modalities for refund, including the details of the contact persons such as names, addresses and contact

details. A period of two (2) months from the date of the publication of the public notice shall be provided to the Complainants /investors /clients for submitting their claims.

- (c) The repayments to the complainants /investors /clients 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 paragraph 7(a) above, the Noticee shall file a report detailing the amount refunded to investors / clients, which should be addressed to the “*Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051*”. The above mentioned report should be duly certified by an independent Chartered Accountant and should indicate the amount of refund, mode of payment by bank transactions, name of the parties, communication address, mobile / telephone numbers, etc. The report shall also include the proof of payment to the Complainant for the amount of ₹10,00,000, as discussed at paragraph 6.3.
- (e) The remaining balance amount shall be deposited with SEBI, which shall be kept in an escrow account for a period of one year for distribution to clients / investors who were availing the investment advisory services from the Noticees. Thereafter, the remaining amount, if any, shall be deposited in the Investors Protection and Education Fund, maintained by SEBI.
- (f) The Noticee is 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 Complainants /investors /clients who were availing the unregistered investment advisory services from the Noticee, as directed in this Order, from the bank accounts of the Noticee.

- (g) The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of **3 (three) years** from the date of this Order or till the expiry of **3 (three) years** from the date of completion of refunds to Complainants /investors /clients along with depositing of balance amounts, if any, with SEBI, as directed in paragraphs 7(a) and 7(e), whichever is later.
 - (h) Upon submission of reports on completion of refunds to complainants /investors /clients to SEBI and deposit of the balance amount if any, with SEBI, the direction at paragraph 7(f) shall cease to operate within fifteen days thereafter.
 - (i) The Noticee shall not undertake, either during or after the expiry of the period of debarment /restraint as mentioned in paragraph 7(g), 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.
8. The above direction for refunds /repayment to clients /investors and depositing the balance amount with SEBI, as given in paragraphs 7(a) and 7(e) above, does not preclude such complainants /investors /clients to pursue other legal remedies available to them under any other law against the Noticee for refund of money or deficiency in service.

9. This Order shall come into force with immediate effect.
10. A copy of this Order shall be served upon the Noticee. A copy of this Order shall also be forwarded to the recognised Stock Exchanges, Depositories, Banks and Registrar and Transfer Agents for necessary compliance with the above directions and also the Government of Madhya Pradesh for its information.

Place: Mumbai
Date: January 18, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA