

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:

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

In the matter of Unregistered Investment Adviser

1. The present proceedings emanate from show cause notices dated July 14, 2021 and February 07, 2022 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against Ms. Jyoti Kalra, in her capacity as the sole proprietor of Apex Financial Services (hereinafter referred to as “**Apex**” and collectively along with Ms. Jyoti Kalra as “**Noticees**”) wherein it was *prima facie* alleged that the Noticees were engaged in investment advisory services without obtaining a certificate of registration from SEBI in violation of the provisions of 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**”). The SCN called upon the Noticees to show cause as to why suitable directions should not be issued against the Noticees under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992.
 2. I note that the SCN alleges the following:
 - a. SEBI had received a complaint on February 24, 2017 against the Noticees. In the complaint, it was, *inter alia*, alleged that the complainant had made a
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payment of Rs. 9,000 for the purpose of advisory services to the Noticees but the Noticees did not provide proper service and the complainant suffered a loss of Rs. 16,000.

- b. The website of the Noticee, www.apexresearch.co.in was not active as on the date of SCN. From the archived pages of the said website, downloaded from web.archive.org, it was observed that the following was disclosed on the website:

“Apex Research is an emerging global business conglomerate incorporated by proficient stock market veterans after huge success in many different models of technical analysis. Apex research is well known for its vast experience in technical analysis for many years now has succeeded exceptionally well in all fields of long term and short term trading.”

“Apex research is a professionally run company with a long term goal to provide maximum return on investment (RoI) on every investors money”

“Our services- currency, agri commodity, MCX premium, HNI MCX, base metal +energy, precious metal”

- c. As per the archived webpages of the website Apex was providing various investment advisory services viz. currency, agri commodity, MCX premium, HNI MCX, base metal+energy, precious metal, etc.
- d. For receiving payments from the clients, Payumoney link was displayed on the website. From the details provided by Payumoney, it was observed that the following bank account was linked to Payumoney:

Bank	Name of Account Holder	Account No.	IFSC Code	Authorised signatory
Bank of India	Apex Financial Services	910120110000507	BKID0009101	Jyoti Kalra

- e. From the KYC documents received from Payumoney and Bank of India, it was observed that the Bank of India account linked to Payumoney was in the name of Apex Financial Services, proprietor Ms. Jyoti Kalra. Total credits in the bank

account were Rs. 1,11,49,273 for the period June 24, 2014 to February 22, 2018. Rs. 81,10,827 were received through Payumoney account during the period July 14, 2015 to September 04, 2017.

- f. Apex through its website stated that it was providing investment advisory services and the website also disclosed Payumoney details for receiving fee from clients. The Noticees were not registered with SEBI. It was observed that the Noticees were engaged in the activities of an 'investment adviser' as defined under Regulation 2(1)(m) of the IA Regulations, 2013. It was therefore alleged that the Noticees were engaged in providing unregistered investment advisory services without obtaining registration from SEBI as required under Section 12(1) of SEBI Act read with regulation 3(1) of IA Regulations, 2013 thereby violating the said provisions of the SEBI Act, 1992 and the IA Regulations, 2013.
 - g. The SCN had thus, 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 him for the alleged violations.
3. The SCN dated July 14, 2021 sent to the Noticees through Speed Post had returned undelivered. SCN dated February 07, 2022 sent to other four addresses of the Noticees by Speed Post was delivered at three of the addresses of the Noticees. The Noticees filed their reply dated March 02, 2022 in the matter. In view of the same, the matter was placed before me on March 21, 2022 for granting personal hearing to the Noticees. The Noticees were granted an opportunity for personal hearing on June 09, 2022. On the scheduled date of hearing, the Authorised Representative of the Noticees appeared for hearing virtually through video conferencing and made submissions in line with their reply. The submissions of the Noticees, *inter alia*, are as follows:
- a. Apex was the proprietorship firm incorporated by Ms Jyoti Kalra with a view to do business of consultancy in financial services. Ms Kalra was not aware that for running such business she required SEBI registration. Ms Kalra had created

a website www.apexresearch.co.in through which she used to manage the business. Clients used to analyse the performance of the firm before taking any subscription through free trial and upon getting satisfied completely, they used to take services.

- b. The Noticee provided the clients tips in the share market by charging certain amount of fee from them for which they were duly agreed. None of the clients were forced in any manner nor were in undue influence nor any coercion was made for taking the advisory services. The Noticee did not promise assured returns or handled client's demat accounts or claimed to be registered with SEBI.
- c. Except one client who complained directly to SEBI, none of the other clients had any issues or grievance or faced any losses. The Noticees denied the allegations made in the complaint.
- d. The Noticees did not receive any intimation/communication from SEBI that registration is required for carrying out such activities. If SEBI had informed the Noticee that she is into wrongdoing and non-compliance activity, she would have closed down her operations. The operations were closed down around in 2017 as Ms Kalra got married.
- e. The amount collected by the firm is lesser than the amount mentioned in the SCN as there were several personal deposits in the accounts which were not related to business. Further, there were a lot of expenses incurred by the firm which have not been considered in the SCN.

Consideration of submissions and findings:

- 4. I have considered the allegations made in the SCN along with the findings of the examination by SEBI stated therein, reply received in the matter and submissions made by the Noticees during personal hearing.

5. In this regard, I note that the definition of Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013 provides as follows:

“investment adviser means 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;”

6. Further, Regulation 2(1)(l) of IA Regulations, 2013 provides as follows:

“investment advice means 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;”

7. I note that the website www.apexresearch.co.in, *inter alia*, claimed as follows:

“Apex Research is an emerging global business conglomerate incorporated by proficient stock market veterans after huge success in many different models of technical analysis. Apex research is well known for its vast experience in technical analysis for many years now has succeeded exceptionally well in all fields of long term and short term trading.”

“Apex research is a professionally run company with a long term goal to provide maximum return on investment (RoI) on every investors money”

“Our services- currency, agri commodity, MCX premium, HNI MCX, base metal +energy, precious metal”

8. From the above, I note that the website www.apexresearch.co.in claimed that Apex is a stock market advisory firm and offered tips in currency, agri commodity, base metal, energy and MCX segments. I also note that the Noticees have admitted that Apex was a proprietorship concern of Ms Jyoti Kalra and that the Noticees were in the business of providing tips in the share market to clients and charged fee from them as well. Therefore, I find that the Noticees were providing investment advice, *inter alia*, through the website www.apexresearch.co.in. The Noticees have also

admitted that the website www.apexresearch.co.in was used to manage the operations of the Noticees. However, the Noticees have contended that they were not aware of the statutory provisions in this regard including the registration requirements and that if SEBI had informed them about it, they would have stopped operations. In this regard, I note that it is an accepted principle that *ignorantia juris non-excusat*. In view of the above, I find that the contention of the Noticees in this regard is untenable.

9. Further, as per the payment page on the website www.apexresearch.co.in, I note that in order to make payments for availing the services offered on the website, a link of the Noticees' Payumoney account was provided. During examination, SEBI also procured the transaction statements of Noticees' Payumoney account and the bank account held with Bank of India, which was linked to the Payumoney account of the Noticees. It was noted that Rs. 81,10,827 were received by the Noticees through Payumoney account during the period July 14, 2015 to September 04, 2017. Further, it was noted that the total credits received in the Bank of India account of the Noticees during the period June 24, 2014 to February 22, 2018 were Rs. 1,11,49,273. In this regard, from the account statement of the Bank of India account of the Noticees, I also note that there are several credits through direct fund transfer from different entities using IMPS/NEFT/UPI transfer. Further, there were several transactions having the narration 'trading' and 'equity'. Therefore, I find that the Payumoney account and Bank of India account were being used to receive fee from clients to whom investment advice was being provided by the Noticees. The Noticees have not denied the amounts received in their bank account or the credits received through Payumoney but contended that the amount collected by the Noticees for advisory services was less as there were several personal deposits in the accounts which were not related to the business of the Noticees. In this regard, I note that while making the contention, the Noticees have neither identified such credits nor provided any documentary proof for the same. In view of the above, the credits received in the bank account towards fee for investment advisory services and those purported to be received as personal deposits cannot be distinguished. Therefore, the contention of the Noticees in this

regard is untenable. The Noticees have further contended that there were expenses incurred by the firm which have not been considered in the SCN. In this regard, I note that these proceedings are for, *inter alia*, determining the liability of the Noticees to make refund of fees to the investors, which the Noticees were not entitled to collect from the investors unless they had obtained required registration as investment adviser. Any expenses that the Noticees might have incurred for the income generated through unregistered activity has to be borne by the violator. Investors who are entitled to get return of whole fees cannot be asked to share the burden of expenses of the Noticees. Therefore, I am not inclined to accept the submission of the Noticees in this regard and the contention of the Noticees in this regard is untenable.

10. In view of the fact that investment advice was being offered through the website www.apexresearch.co.in and the link to Payumoney account of the Noticees was provided on the said website and fees towards the IA services were being received through the Payumoney account and also directly in the Bank of India account, I find that 'investment advice' as provided under Regulation 2(1)(I) of the IA Regulations, 2013, *in lieu* of consideration, was being offered by the Noticees through their website www.apexresearch.co.in.

11. I also note that the complainant in his complaint stated that he paid Rs. 9,000 to the Noticees through their Payumoney account. The corresponding credits were noticed in the Payumoney account statements of the Noticees, as received from Payumoney. The Noticees have denied the allegations made by the complainant. However, in view of the credit of funds in the Noticees' Payumoney account, I am inclined to accept the allegation that the complainant paid the money to the Noticees to get investment advisory services offered by the Noticees. Therefore, I find that the contention raised by the Noticees in this regard is untenable.

12. From the aforesaid facts, I find that the Noticees were engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through their website www.apexresearch.co.in *in lieu* of

consideration. I note that if an entity is engaged in providing 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 *in lieu* of consideration, including entities which are holding themselves out as investment advisers, are covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, Rs. 1,11,49,273 were received in the Bank of India account of the Noticees during the period June 24, 2014 to February 22, 2018. Hence, I find that the Noticees were engaged in the business of providing investment advice to their clients, for consideration, and thus, acting as investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

13. I also note that, it is imperative that any person carrying out investment advisory activities must necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992 and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

“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.”

14. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 have been framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under regulation 3(1) of the IA Regulations, 2013, which, *inter alia*, provides that, 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 SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

15.I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations, 2013:

- a. An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 alongwith requisite non-refundable application fee;
- b. The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:
 - i. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

- ii. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
 - iii. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM
- c. Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

16. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticees were acting as Investment Adviser, although they were not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticees without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act, 1992 read with regulation 3(1) of the IA Regulations, 2013.

17. As noted above, Rs. 1,11,49,273 were received by the Noticees through Bank of India account during the period June 24, 2014 to February 22, 2018, *in lieu* of the unregistered investment advisory activities.

18. I also note that in the case of Shri C. Paranitharan and Others and Trend Market Advisory Services, SEBI had passed orders dated July 05, 2022 and July 07, 2022, respectively, *inter alia* directing the Noticees therein to refund the fees or consideration received from investors in respect of their unregistered investment advisory activities. In the respective appeals filed against these orders

by the respective Noticees, Hon'ble Securities Appellate Tribunal vide common order dated September 21, 2022 *inter alia* directed the appellants therein to deposit the balance amount after making refunds to investors, with SEBI. It was also directed that the balance amount deposited with SEBI shall be kept in escrow account for a period of one year and be distributed to any claimants and thereafter, the remaining amount, if any, will be deposited in the Investor Protection and Education Fund.

Directions

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.

20. The direction for refund and depositing the balance amount with SEBI, as given in para 19(a) and 19(e) 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.

21. This order comes into force with immediate effect.

22. 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/-

Date: January 09, 2023

Place: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA