BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/AR/2019-20/4173-4175]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of

Succinct Fintech Services Private Limited
(PAN: AAQCS0920E)

Bhuvaneshwar Prasad
(PAN: AMRPB5878N)

Soubhagya Kumar Patra
(PAN: ARLPP4815G)

In the matter of
Succinct Fintech Services Private Limited

BACKGROUND OF THE CASE

1. Succinct Fintech Services Pvt Ltd (hereinafter referred to as **'Noticee 1' / 'Succinct'**) had filed an application for registration with Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) on July 3, 2017 as an Investment Adviser. While scrutinizing the documents and the information furnished by Succinct, it was observed that it had been carrying on Investment Adviser activities since FY 2013 i.e. prior to the filing of its aforesaid application with SEBI till July 2017 without having registered itself as an Investment Adviser with SEBI under SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as **'Investment Adviser Regulations'**). Such activities of the

Notice 1 and its directors Mr. Bhuvaneshwar Prasad (hereinafter referred to as **'Noticee 2'**) & Soubhagya Kumar Patra (hereinafter referred to as **'Noticee 3'**) were, *prima facie*, suspected to be in violation of the provisions of the Section 12 (1) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Regulation 3 (1) of Investment Adviser Regulations. The Noticee 1, the Noticee 2 and the Noticee 3 are hereinafter collectively referred to as **'the Noticees'.**

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer in the instant proceedings which was communicated vide communique dated June 24, 2019, under Section 15 I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge the aforesaid violations of SEBI Act and Investment Adviser Regulations by the Noticees and if found liable, to impose penalty under Section 15HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice no. SEBI/EAD-1/AA/KL/17571/2019 dated July 11, 2019 (herein after referred to as '**SCN**') was issued to the Noticees under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticees and why penalty should not be imposed upon them under Section 15HB of the SEBI Act, for the violations alleged to have been committed by them, as specified in the SCN. The SCN alleged that the Noticees undertook investment advisory services without proper registration in violation of the provisions of SEBI Act and the Investment Adviser Regulations.

4. The Noticees vide letter dated July 18, 2019 submitted their reply to the SCN. Their major submissions are reproduced hereunder:

a) *We, Succinct FinTech Services Private Limited (Noticee 1'/ 'Succinct'), have worked as financial planner to our clients to advice/help them in creating a financial planning report which is aimed at a mathematical calculation & projection for achieving long term and short term goals, such as retirement planning, children future goals, other financial objectives, suggestion on how much emergency funds need to be maintained to meet any financial unforeseen events, such as; job loss, death of earning member etc. As per service engagement, we also performed, filing of income tax returns, visiting income tax office on behalf of client's to address any notice, suggestion on how to fund home buying, marriage, higher education either through loans, withdrawal of EPF, PPF, or ask family support for the same etc. Our clients, found us as their mentor, tax adviser, personal financial adviser. With this much of trust, we never diverted from our core objective to protect our client's interest, always discouraged them to take any decision which would negatively affect their finances, goals. While we are/were acting as financial planner to them, neither the company "Succinct FinTech Services Private Limited", nor its Directors and Employees were associated with security market to buy, sell or deal with any type of securities.*

b) *We never mentioned ourselves as Investment Adviser to acquire new clients or conveyed the same to our existing clients. We are unfortunate that we have not kept any records for such communication, but to support the fact, we are sharing copies of email accepted engagement letters between client & financial planner towards service for Comprehensive Financial Planning within the engagement terms, we nowhere put our self as investment adviser, but financial planner to look after the areas as mentioned below table. Our core objective is to help our clients to take right financial decision, which are sometime not even related to investment products or investment advice. For example; answers/justification to "Whether buying house property is better or staying in Rented or both", "taking a decision for* *accepting a new job offer based on new salary package", "standalone calculation of achievability of retirement goals, children educations expenses" etc.*

c) *Vide SEBI letter, dated July 20, 2017, we (Succinct) were advised to provide the details of investment advisory activities rendered during FY 2013-14 till the date of aforesaid letter i.e. July 20, 2017. While responding to the letter with the list of clients to whom services rendered, we further clarify that all the fee received i.e. Rs.51,98,776 in span of 4 years are towards Comprehensive Financial Planning only and this is not the fee solely received for Investment Advisory. Even in our invoices we indicated the fee received for Comprehensive Financial Planning only. Above table for list of service areas covered, out of 22 points mentioned, only 5 points (from 15th point to 19th point) can be attributed towards investment related, but entire fee received, or service rendered is not towards Investment Advisory only.*

d) *As a support we are enclosing, few engagement letters, copies of suggestions, email interactions, report/recommendations shared to clients, such as Income Tax Filing, Company Stock Options related grant/exercise/capital gains calculations, insurance recommendations, advice on existing Loans/liabilities, Salary income comparison with new offer and help in decisions.*

e) *Starting from FY 2013-14 up to July 03, 2017, we were struggling to make the company capable to meet the capital adequacy and registration fee. At the same time, we had to look after family financial commitments. We have no other knowledge or other technical expertise to generate different source of income. It was a do or die situation. During this phase, we never involved into any activities which might either directly or indirectly affect our client's interest. Even no complaints have been received from clients w.r.t services delivered to them.*

f) *Due to inadequacy of capital requirements, we were unable to apply for SEBI registration. As per the requirements, the minimum required net-worth should be Rs. 25 Lacs. At the earlier phase of company, the revenue earnings after payment of salaries, rents & other fixed expenses weren't enough to fulfil the capital requirements for the registration purpose.*

g) *We accept the fact that, we delayed applying for registration, but at the same time we want to convey our plight, that we never carried any intention to contravene the rule deliberately, but compelled under major financial crisis and struggles to make the company surviving, capable till we stand and apply for the registration.*

h) *With these explanations, we request you to condone this delay and waive off further inquiry and penalties against all Noticees.*

5. Further, in the interest of the principles of natural justice, an opportunity of personal hearing was granted to the Noticees on August 09, 2019. The Noticees 2 and 3 appeared for the hearing and reiterated the submissions made vide their reply letter dated July 18, 2019. Further, the Noticees also submitted that no complaint has ever been received or was pending pertaining to the investment advisory activities of the Noticees. It was further submitted by them that there was no intention to violate any SEBI Regulations and therefore, lenient view be taken in the matter.

CONSIDERATION OF ISSUES & FINDINGS

6. I have carefully perused the charges levelled against the Noticees, its reply and the documents / material available on record. I note that the issues that arise for consideration in the present case are :

   (a) Whether Noticee 1 and its directors had indulged in providing unregistered investment advisory services and thus violated provisions of Section 12(1) of the SEBI Act read with Regulation 3 (1) of the IA Regulations?

(b) Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act?

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

7. Before I proceed with the matter, it is pertinent to mention the relevant provisions of the Act/Regulations, alleged to have been violated by the Noticees. The same are reproduced below:

SEBI Act

REGISTRATION CERTIFICATE

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:

INVESMENT 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:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub- regulation(2) within the said period of six months, till the disposal of such application.

Whether Noticees have violated provisions of Section 12(1) of the SEBI Act read with Regulation 3 (1) of the IA Regulations.

8. The Noticees had filed an application on July 3, 2017 with SEBI for registration of Succinct as an Investment Adviser. On perusal of the application filed by the Noticees, it was alleged that Succinct was providing Investment advisory services to its clients without obtaining registration from SEBI during the period 2013 to 2017. In this regard, it is pertinent to mention the definition of financial planning, Investment advice and Investment adviser as stipulated in Regulation 2 (1) of the Investment Advisers Regulations. The text of the said sub-regulation is mentioned below:

Definitions.

2.(1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,–

(h) "financial planning" shall include analysis of clients' current financial situation, identification of their financial goals, and developing and recommending financial strategies to realise such goals;

(l) "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:

(m) "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;

9. Vide SEBI letter dated July 20, 2017, Succinct was advised to provide the details of the investment advisory activities rendered by it during the period starting from FYs 2013-14, till the date of the aforesaid letter of SEBI i.e. July 20, 2017. In response to the SEBI letter, Succinct, vide letter dated August 01, 2017, furnished the details of no. of clients for whom services were rendered by it, the type of service rendered and the income generated thereon. The brief of the details furnished by Succinct are given below:

Period	**No. of clients opted for Investment Advice Services**	**Service Offered**	**Total Fee collected in Rs.**
2013 – 14	25	Comprehensive Financial Planning	3,21,000.00
2014 – 15	67	-do-	10,40,000.00
2015 – 16	78	-do-	14,31,831.00
2016 – 17	94	-do-	18,05,745.00
2017 – 26/07/2017	24	-do-	6,00,200.00
Total	288	-do-	51,98,776.00

From the table given above, it is observed that the Noticee was providing 'Comprehensive Financial Planning' services to its clients and it generated a total revenue of Rs. 51,98,776 by providing such services.

10. As observed form the information provided by the Noticees to SEBI, following sample instances are observed which duly illustrate the entire trail of registration of the clients of Succinct:

Period	Name of the client	Date of KYC/ Financial Planning Questionnaire Sheet sent to the clients	Financial Planning Engagement letter	Invoice Date for Fees issued to the clients	Fees collected from the clients	Date of credit by the client to Noticee's bank account	Date of Advisory reports Sent on
2013-14	Narayan Easwaran	25/01/2014	25/01/2014	01/02/2014	18,000.00	30/01/2014 / 06/02/2014	18/02/2014
	Rajesh Bysani	22/01/2014	10/03/2014	28/01/2014	20,000.00	06/02/2014	13/02/2014
	Amit Chaudhary	25/02/2014	10/03/2014	10/03/2014	20,000.00	11/03/2014	25/02/2014 (e-mail)
2014-15	Ankur Hazarika	27/10/2014	17/10/2014	31/10/2014	16,000.00	31/10/2014	12/11/2014
	Neeta Sharma	06/11/2014	04/11/2014	01/12/2014	16,000.00	10/11/2014 /	29/11/2014
	Sivesh Kumar Rangasamy	19/01/2015	19/01/2015	20/01/2015	20,000.00	20/01/2015	31/01/2015
2015-16	Kapoor Manu	23/06/2015	19/06/2015	22/06/2015	25,000.00	22/06/201.5	04/07/2015
	Pranjal	16/09/2015	11/09/2015	16/09/2015	20,000.00	16/09/2015	24/09/2015
	ICS Sridhar	09/09/2015	05/09/2015	07/09/2015	25,000.00	07/09/2015	18/09/2015
2016-17	Binuraj Mohanan	23/05/2016	22/05/2016	23/05/2016	35,000.00	23/05/2016	10/06/2016
	Vijay Kumar	23/06/2016	22/06/2016	23/06/2016	22,000.00	23/06/2016	07/08/2016
	Arvind Srinath	09/11/2016	09/11/2016	09/11/2016	29,000.00	09/11/2016	08/12/2016
2017 till 26/7/2017	Anjan	16/05/2017	23/04/2017	23/04/2017	22,000.00	25/04/2017	26/07/2017 (e-mail)
	Samiappa Palanivelan	27/05/2017	27/05/2017	27/05/2017	20,000.00	04/06/2017	15/06/2017
	Nandakumar& Indujavaregowda	2/ 0 6/ 2017	04/06/2017	12/06/2017	22,000.00	12/06/2017	06/07/2017

11. Under Regulation 2(1)(i) of the Investment Adviser regulations, advice related to investment products and financial planning, as rendered by Succinct to its clients mentioned in table above, have specifically been termed as investment advice. Therefore, it is clear from the table above that the Noticees were

registering clients for rendering investment advisory services to them and raising invoice for providing its services. Such activities were being conducted by the Noticees without taking certificate of registration from SEBI.

12. The Noticees have submitted in their replies that they never mentioned themselves as investment advisers to their clients as they were only providing financial planning services to their clients. The Noticees have submitted the details of the areas that have been covered by them while providing Comprehensive Financial planning to its clients. The details of the same are given below:

Sl. No.	**Comprehensive Financial Planning Services Offered**
1	Financial Health Check Up
2	Net-Worth Analysis
3	Budget & Cash Flow Planning
4	Financial Ratio Analysis
5	Tax Planning {Including ITRs for Non-Audit)
6	Emergency Fund Planning
7	Evaluation of Human Life Value (HLV)
8	Need Based Analysis for Life Cover
9	Existing Insurance Policy Analysis
10	Health Insurance Planning
11	Retirement Planning
12	Child Future Planning
13	Other Financial Goals Planning
14	Loan/Debt Management
15	Risk Management for Investments
16	Asset Allocation Strategy
17	Investment Planning with Model Portfolio strategy
18	Proactive alerts for Investments
19	Existing Investments Review
20	Basic assistance on Estate Planning - WILL creation
21	Quarterly Review
22	Financial Mentoring

13. Further, the Noticees have also admitted in their reply that out of the abovementioned 22 activities offered by Succinct for financial planning of its clients, 5 activities viz. Risk Management for Investments, Asset Allocation Strategy, Investment Planning with Model Portfolio strategy, Proactive alerts for Investments and Existing Investments Review can be attributed towards investment activities. However, as stipulated in Regulation 2(1)(h) of the Investment Advisers Regulations, financial planning also include analysis of clients' current financial situation, identification of their financial goals, and developing and recommending financial strategies to realize such goals. Considering the aforementioned activities stipulated in the Regulation 2(1)(h) of the Investment Advisers Regulations, I find that apart from the 5 activities of Succinct admitted by the Noticees as Financial planning activities, 3 other activities of Succinct viz. Retirement Planning for its clients, Child Future Planning and other Financial Goals Planning are also financial planning activities.

14. The Noticees, while applying for certificate of registration, vide their letter dated August 01, 2017, had confirmed in writing that Succinct had stopped rendering investment advisory activities/services w.e.f July 27, 2017. The Noticees further submitted that Succinct would not carry on the Investment Advisory activity, until obtaining the registration from SEBI. The Noticees in their reply to the SCN dated July 18, 2019 further submitted that the fee received i.e. Rs.51,98,776 in a span of 4 years was the result of twenty-two types of activities which Succinct was providing as part of the Comprehensive Financial Planning for its client, a part of which only involved Investment Advisory services. In this regard, I have concluded in the previous paragraphs that 8 activities out of the total 22 activities in the Comprehensive Financial Planning services provided by Succinct are in the nature of financial planning as stipulated under Investment Advisers Regulations. Therefore, the Noticees have clearly admitted in their

submissions made to SEBI that they were rendering services of financial planning to its clients without obtaining registration from SEBI.

15. The Noticees, in their reply, while admitting to the allegation that they had delayed in applying for registration for acting as Investment Adviser, have also mentioned that they never had any intention to contravene the rule deliberately, but were compelled under major financial crisis because of which they could not apply for registration with SEBI earlier. In this regard, I note that the Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund* has observed that – "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow*." Therefore, in the instant matter, once it is established that Succinct was providing the Investment Advisory services to its clients without obtaining necessary certificate of registration from SEBI, which has also been admitted by the Noticees themselves, it is concluded that Succinct has violated the provisions of the Section 12 (1) of the SEBI Act read with Regulation 3 (1) of Investment Advisers Regulations.

16. Further, on perusal of the available records, it is observed that the Noticees 2 and 3 were the directors of Succinct and were also actively involved in the day to day management of affairs of Succinct. Therefore, I am of the opinion that it is a fit case to impose penalty on Noticees 2 and 3. At this juncture, I also find it pertinent to refer to the order dated October 5, 2012 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Mr. N. Narayanan v. The Adjudicating Officer, SEBI* (Appeal No. 29 of 2012) wherein, Hon'ble SAT observed, "*The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of*

care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto".

17. In view of the observation of Hon'ble SAT mentioned above and in view of the admission of the Noticees regarding providing unregistered Investment Advisory services, I conclude that the Noticee 2 and 3 being the directors of the Noticee 1, have also violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the Investment Advisers Regulations.

18. Therefore, in view of the violation of the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of the Investment Advisers Regulations, I conclude that the Noticees are liable for penalty under the provisions of Section 15HB of the SEBI Act, which reads as under :

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.
15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees*

19. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Rules, require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely: -
    (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
    (b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

20. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticees. The Investment Advisers Regulations mandate all registered Investment Advisers to comply with the regulatory requirements to achieve the goal of protection of investor's interest. The objective of registration is to ensure that only those Investment Advisers render their services who are financially and technically capable of dealing with the complexities of financial planning and investment in securities. The registration of an Investment Adviser is also necessary to avoid the situation of conflict of interest. From the available records, I note that the Noticees have admitted to the allegation that they continued to provide the services of financial planning to their clients till July, 2017 without obtaining registration from SEBI as they were not able to meet the criteria laid down in the Investment Advisers Regulations. The above actions of the Noticees is clearly in violation of the provisions of Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 and Section 12(1) of SEBI Act, 1992 and therefore a commensurate penalty needs to be imposed on them.

ORDER

21. After taking into consideration all the facts and circumstances of the case, the material on record and the factors stipulated in Section 15 J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15 I of the SEBI Act, 1992 read with Rule 5 of the Rules hereby impose a penalty of ₹ 10,00,000 (Rupees Ten lakh), jointly and severally, on the Noticees, under Section 15 HB of the SEBI Act, 1992.

22. I am of the view that the said penalties are commensurate with the lapse/omission on the part of the Noticees. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

23. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Division of Regulatory Action-4, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan 2, Plot No. C – 7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051”:

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties. Payment can also be made online by following the below path at SEBI website www. sebi.gov.in: ENFORCEMENT ->Orders->Orders of AO ->PAY NOW.

25. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: August 29, 2019 **Dr. ANITHA ANOOP**
Place: Mumbai **ADJUDICATING OFFICER**