

SECURITIES AND EXCHANGE BOARD OF INDIA**FINAL ORDER**

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Noticee	PAN
1.	M/s Capital Mars	APRPP1496H
2.	Shri Santosh Patidar Proprietor : M/s Capital Mars	APRPP1496H

In the matter of Unregistered Investment Adviser

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1. The present order is being passed in compliance with order dated April 13, 2023 passed by the Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**SAT**") whereby the Hon'ble SAT *inter alia* observed and directed as follows:

"2. The appellant admits that he was carrying on an unregistered advisory services and consequently to that extent the finding of the WTM is therefore confirmed. The learned counsel however contended that the impugned order was passed without serving the show cause notice and without giving an opportunity of hearing. In this regard, we find that the appellant was duly served with the show cause notice at the last known address. It was stated that the same was incorrect but we however find that it was sent at the correct address as given by the appellant himself. In addition, we find that the hearing notice was also served at the same address which came back undelivered and thereafter a publication was made in two newspapers and notice of hearing was also sent at the correct email id. In view of the aforesaid, we are satisfied that the appellants were served as provided under Rule 7 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995.

Final Order in the matter of M/s Capital Mars and Anr.

3. It was urged that the amount directed to be refunded by the WTM is erroneous. In this regard, certain documents have been filed by the appellants to show that the amount collected from the clients towards advisory services was far less than what has been depicted in the impugned order. Considering the aforesaid, while disposing off the appeal we direct the WTM to reconsider the quantum to be refunded by the appellant. In this regard, the appellant shall file an affidavit along with the proof and evidence within three weeks from today which will be considered by the WTM and appropriate orders will be passed within four weeks thereafter...”

2. The aforesaid SAT Appeal No. 276 of 2023 was filed by Mr. Santosh Patidar, sole proprietor of M/s Capital Mars and M/s Capital Mars (hereinafter referred to as **“the Noticees”**) before Hon’ble SAT challenging the order no. WTM/AB/WRO/WRO/20743/2022-23 dated October 27, 2022 (hereinafter referred to as the **“Final Order”**) passed by the Securities and Exchange Board of India (hereinafter referred to as **“SEBI”**). The said order came to be passed by SEBI in proceedings emanating from issue of show cause notice dated October 08, 2021 (hereinafter referred to as **“SCN”**) by SEBI against the Noticees wherein it was *prima facie* found 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”**).
3. After the aforesaid SCN was issued to the Noticees, an opportunity of hearing was provided to the Noticees by SEBI. However, the Noticees did not appear for the same, nor did they submit any reply to the SCN, Thereafter, the Final Order was passed by SEBI. The Final Order observed that the Noticees in the two bank accounts mentioned on its website, one of which was in the name of Capital Mars, a proprietary firm of Mr. Santosh Patidar (ICICI Bank Account No. 237105500049) and other in the name of Mr. Santosh Patidar (HDFC Bank

Account No. 50100064791099) had received Rs. 20,24,652 (during the period from March 15, 2014 to December 15, 2016) and Rs. 2,16,335.63 (during November 01, 2014 to April 01, 2017), respectively, through unregistered investment advisory activities as observed above. Thus, Final order passed by SEBI found that the Noticees had received a total fees of Rs. 22,40,987.63/- in their aforesaid two bank accounts.

4. The Final Order issued the following directions:

“19.

- a) The Noticees shall jointly and severally, 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 Investors Protection and Education Fund maintained by SEBI;
- f) The Noticees are restrained from selling their assets, properties and holding of mutual funds/shares/securities held by them 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."

- 5. Aggrieved by the aforesaid order of SEBI, the Noticees filed Appeal No. 276 of 2023 before Hon'ble SAT. Vide its order dated April 13, 2023, Hon'ble SAT disposed of the appeal and remitted the matter to SEBI to reconsider the quantum to be refunded by the appellant in view of documents filed by the appellants to claim that the amount collected from the clients towards advisory services was far less than what has been depicted in the Final Order. The Hon'ble SAT directed the appellant to file an affidavit along with the proof and evidence and directed SEBI to pass appropriate order in the matter thereafter.
- 6. A hearing was granted to the Noticees on May 17, 2023. On the said date Mr. Santosh Patidar appeared through video conferencing and made submissions. Attention of Mr. Santosh Patidar was drawn to the fact that the affidavit dated May 02, 2023 submitted by him was lacking in certain material particulars related to the explanation of credits in the Noticees' bank account and the

Noticees were advised to file further explanations/ affidavits. The attention of Mr. Santosh Patidar was also drawn to emails submitted by him along with his affidavit. The emails were purportedly from the clients of the Noticees' telemarketing business, stating that the money had been paid to the Noticees by them for purchase of computer/ computer accessories, etc. Certain discrepancies in the said emails were pointed out to the Noticees viz: the residential address of the client was different from where the client was depositing money in Noticee's bank account (client address is in Mumbai and deposit has been made in Kolkata, client is in Ahmedabad and deposits have been made in Pune, Rajasthan, etc.), the clients not residing in the Noticee's state and unlikely to buy computers from a vendor in a different state, etc. The Noticees were given time of seven days to submit further affidavits and supporting documents for the said emails. The hearing was concluded *qua* the Noticees. As directed during the hearing, Mr. Santosh Patidar submitted a further affidavit dated May 24, 2023 with certain emails providing explanation for the doubts raised during the personal hearing. Mr. Santosh Patidar's affidavit is discussed in detail in later paras.

7. In affidavit dated May 02, 2023, Mr. Santosh Patidar had stated the following:

- After completing MBA, he wanted to be self-employed and he was desirous of starting his own business and therefore in the year 2013, he started a Firm named "Om Sai Shopee" and applied for a License under the Shops and Establishment Act, which was granted on May 16, 2013.
- Initially after receiving the above license, he started business of "Telemarketing and Digital Marketing" and during the very same days, it came to his knowledge a business named Financial Consultant. Therefore, he started learning the Financial Consultancy subject and eventually in and around the year 2014, he incorporated a proprietary firm named M/s. Capital Mars.
- Upon establishing M/s. Capital Mars, he engaged a web designer to develop a website www.capitalmars.com to carry out the business and started the said website for providing certain Financial Consultancy services, however since he already held a license under the Shops and Establishment Act in the name of "Om

Sai Shopee” he continued with the business of Telemarketing and Digital Marketing , etc., as well.

- He carried out the business of “Financial Consultancy” as well as “Telemarketing and Digital Marketing” during the Financial Years 2014-15, 2015-16 and 2016-17 and in and around March 2017, one of his Financial Consultancy client Mr. Dulal Chandra, made a criminal complaint against him and during that process he learnt that the said Business of Financial Consultancy would require a license from Securities and Exchange Board of India (SEBI).
- He refunded the amounts received from the Complainant Mr. Dulal Chandra and also some other clients from whom M/s. Capital Mars had received some amounts towards Financial Consultancy and who intended to receive a refund. Thereafter he stopped the said business of Financial Consultancy.
- The amount collected by M/s. Capital Mars, towards fees/charges from its clients during its entire period of business was Rs.5,10,069/- and apart from it an amount of Rs.1,36,000/- was received from the clients but has been refunded back to the clients.
- The total amount of Rs.22, 40,987.63 mentioned by SEBI in its Order dated October 27, 2022 is not correct. The said amount includes duplication of credit entries, wrong entries in bank statement, inter-se self-transfers in the bank accounts, incomes from other business, amounts refunded to clients and also personal transactions, etc., which have nothing to do with Investment Advisory services.
- Along with the Appeal filed before the Hon’ble SAT, he had filed a detailed calculation/bifurcation of all the amounts credited in his Capital Mars’s bank accounts maintained with ICICI bank and HDFC Bank, during the period March 2014 till March 2017. He has explained each and every credit in the bank account and have mentioned against what business the said amount was received, which be considered.
- A Chartered Accountant has also issued a Certificate dated December 17, 2022 certifying the income from activities other than financial consultancy services, during the relevant Financial Years.
- It is clear from the said calculation/bifurcation that the total amount received by him / M/s. Capital Mars against Financial Consultancy / Investment Advisory services was only Rs.5, 10,069/- and apart from the said amount an amount of Rs.1, 36,000/- received from Financial Consultancy / Investment Advisory services, has been already refunded by him / M/s. Capital Mars to its clients.
- The aforesaid bifurcation/calculation contains several credit entries relating to clients who had paid him amounts towards Financial Consultancy / Investment

Advisory, who have provided him a written confirmation (Affidavits, Letters, and Emails) that they do not want refund of any amounts paid by them. Therefore, SEBI's direction in its order to refund all the clients is unwarranted.

- As per the Affidavits, Letters and Emails provided by his clients relating to telemarketing, digital marketing etc., he had received a total amount of Rs.15,94,918.63/- from telemarketing, digital marketing clients, other business, which also includes his personal transactions, bank reversal charges, miscellaneous charges/amounts, which have nothing to do with Financial Consultancy / Investment Advisory amounts.
- The aforesaid bifurcation / calculation also contains several credit entries amounting to Rs.2, 86,394/- in his bank accounts which are his personal transactions, bank reversal charges, other miscellaneous charges/amounts, which have nothing to do with Financial Consultancy / Investment Advisory amounts.
- In view of the above mentioned it is clear that the total amount collected by him / Capital Mars, towards Financial Consultancy / Investment Advisory is not Rs.22, 40,987.63 as mentioned by SEBI in its Order dated October 27, 2022.
- The aforesaid bifurcation/calculation also contains several credit entries amounting to Rs.4, 32,150 received in his bank accounts through the PAYU channel, which is also towards telemarketing, digital marketing clients, other businesses and these amounts received in his bank accounts have nothing to do with Financial Consultancy / Investment Advisory. Since these transactions are very old and are received through PAYU, he will need some more time to gather evidence of these transactions.
- In view of the above submissions, SEBI may consider that out of the Rs.5, 10,069/- amount collected by me/Capital Mars through Investment Advisory services, one of the client Mr. Venkateshwar Rao Velishala, has provided a written confirmation that he has paid an amount of Rs.2, 72,800/- to him / Capital Mars, towards Consultancy / Advisory Services,, which he does not want a refund. Therefore, it is clear that the balance amount apart from Mr. Venkateshwar Rao Velishala, is only Rs.2, 37,269/-.

Along with his affidavit, Mr. Santosh Patidar had submitted a copy of an affidavit from a Chartered Accountant, copies of 7 affidavits from the clients stating that they paid the Noticees for services other than investment advisory, a copy of affidavit from a client stating that he had received investment advice from the Noticees and paid for the same but does not wish to get refund and copies of 11 emails from entities claiming that they were clients of the Noticees and had

availed service other than investments advisory services. These documents are discussed in detail in later paragraphs.

7. As mentioned above, the aforesaid affidavit dated May 02, 2023 was found to be lacking in various particulars and accordingly, during the hearing held on May 17, 2023, Mr. Santosh Patidar was directed to file further affidavit giving complete details. The Mr. Santosh Patidar has filed a further affidavit dated May 24, 2023 wherein he has reiterated his earlier statements and further stated as follows:

- Since he had learnt Electronic and was holding a Degree, his priority and interest was always to do "Telemarketing and Digital Marketing" business. In this business, he used to basically do assembling computers, or related accessories, servicing, repairing, purchase and sell of accessories etc. In this business, he used to call people or companies, who were in need of his services. He also used to personally meet and interact with his contacts, friends, relatives, etc. to get some leads for prospective customers who would like to avail the services. As any other regular normal business, he wanted to develop contacts and number of customers, which would help him build the business. In this process, he also used social media platform for marketing and promotions.
- Initially he received some orders for computers and other accessories through his relatives, friends and their contacts and when his customers availed of his services and satisfied, they referred him to their relatives and friends, some of which eventually became his customers for some kind of services relating to "Telemarketing and Digital Marketing business".
- On several occasions when a product was to be delivered to a customer via Bus Transport and sometimes he use to ask the referrer or that relative or friends to collect the product from his place and deliver it to the end customer. He used to also provide after sales services to the customers.
- Customers use to pay him for the services in his account through cash deposits, or PAYU, etc., as per their own convenience and there was no reason for him to inquire with the customer where that particular amount was deposited from. At that relevant time whatever income he was generating he was having very minimal profit and same was running his business as well as his household expenses.
- Whenever he was in need of any raw material for satisfying his customers' requirements, he used to purchase the raw material from local vendors/shops in

Indore. Also please note, only when the order was large, the vendor, and shop use to issue a bill and for small purchases, there were no bills issued. Everything worked on trust.

- He refunded an amount of Rs.72, 000 received from the Complainant Mr.Dulal Chandra and also refunded further amounts of Rs.64,000/- to few other clients from whom M/s. Capital Mars had received some amounts towards Financial Consultancy and who intended to receive a refund. Thereafter he stopped the said business of Financial Consultancy. Details of the clients to whom refunds were made with supporting documents has been already filed with the earlier Affidavit.
- The amount collected by M/s. Capital Mars, towards fees/ charges from its clients during its entire period of business was Rs.5,10,069/- and apart from it an amount of Rs.1,36,000/- was received from the clients but has been refunded back to the clients.
- The total amount of Rs.22, 40,987.63 mentioned by SEBI in its Order dated October 27, 2022 is not correct. The said amounts include duplication of credit entries, wrong entries in bank statement, inter-se self – transfers in the bank accounts, incomes from other business, amounts refunded to clients and also personal transactions, etc., which have nothing to do with Investment Advisory Services.
- The aforesaid bifurcation/calculation also contains several credit entries amounting to Rs.4, 32,150 received in his bank accounts through the PAYU channel, which is also towards telemarketing, digital marketing clients, other businesses and these amounts received in his bank accounts have nothing to do with Financial Consultancy/ Investment Advisory. He had vide emails dated 02.05.2023 and 15.05.2023, requested PAYU to provide the details of all amounts received in the PAYU wallet and thereafter to his bank accounts through PAYU, which after several follow-ups, on 19 May 2023, PAYU had provided him incomplete data. The data provided by PAYU does not show any name of the person who has paid the amounts through PAYU, therefore I vide email dated 23 May, 2023 he had requested PAYU to provide the names of the persons who have transfers money. In any event in the absence of the complete data from PAYU, he can confirm that none of the amounts received through PAYU relates to Financial Consultancy business, since PAYU was used for “Telemarketing and Digital marketing” business only.

Certain emails have been submitted by the Noticees along with this affidavit.

Consideration of submissions and findings:

8. I have considered the affidavits filed by the Noticees, submissions made during the hearing and further affidavit dated May 24, 2023 filed by the Noticees pursuant to the hearing dated May 17, 2023.
9. It is noted that the SEBI order dated October 27, 2022 was passed against the Noticees holding them guilty of running unregistered investment advisory services without taking registration from SEBI. In the SEBI order dated October 27, 2022, the Noticees were directed to refund an amount of Rs. 22,40,987.63/- which was seen as deposited in the two bank accounts of the Noticees (ICICI Bank Account No. 237105500049 and HDFC Bank Account No. 50100064791099) which were being used for accepting fees from clients in *lieu* of the unregistered investment advisory services. The order dated October 27, 2022 also noted that the Noticees were also receiving money through PayU payment gateway which was connected to the ICICI Bank Account No. 237105500049. I note that the Noticees neither appeared for these proceedings nor did they file any reply, *inter alia*, contesting the amount of fees alleged to be collected by the Noticees, in the SCN. Accordingly, all the amount deposited in these two accounts were directed to be refunded. In its order dated April 13, 2023 the Hon'ble SAT has remanded the matter only to consider the quantum of fees to be refunded by the Appellant therein (the Noticees herein). Therefore, the scope of these proceedings is limited only to ascertain the quantum of fees to be refunded by the Noticee.
8. I note that in his affidavits dated May 02, 2023 and May 24, 2023 filed in the present proceedings as well as in the proceedings before the Hon'ble SAT, the Noticees have *inter alia* submitted that only Rs. 5,10,069/- was collected by

them as fees for unregistered investments advisory services. The Noticees have submitted that the remaining amounts are all credits for non-investment advisory related activities.

9. According to the Noticees, the following is the breakup of the credits received by the Noticees in the two bank accounts:

- (i) The amount purportedly collected as fees for unregistered investment adviser activity was Rs. 5,10,069/-. The Noticees have also submitted an affidavit from one Mr. Venkateshwar Rao who availed of the unregistered investment advisory services from the Noticee stating that he had paid Rs. 2,72,800/- as fees to the Noticee which he does not want a refund of.
- (ii) There was a wrong entry by the bank in his HDFC bank account which had been subsequently reversed by the bank on November 01, 2014 and is reflecting as a credit of Rs. 90,200/-. The Noticee claims that this was not an actual credit of money but just an entry to reverse the error from the bank's side.
- (iii) In the HDFC Bank Account No. 50100064791099, the credit to the tune of Rs. 1,50,000/- were from clients of his telemarketing business in *lieu* of services rendered by the Noticee such as selling computers and peripherals.
- (iv) The credits to the tune of Rs. 56,317/- in HDFC bank account were for his personal purposes.
- (v) In the ICICI Bank Account No. 237105500049, credits to the tune of Rs. 7,25,340/- were made by clients of the Noticees' telemarketing business, in *lieu* of services rendered by the Noticee such as selling computers and peripherals.
- (vi) The total credit of Rs. 4,32,150/- in the PayU account of the Noticee (connected to ICICI Bank Account No. 237105500049) were in connection with his telemarketing business.

- (vii) The credits to the tune of Rs. 2,30,077/- in the ICICI Bank account were for his personal purposes.
10. I note that the Noticees have also submitted a certificate from M/s. SASA & Associates, Chartered Accountants (signed by Mr. Vivek Goyal, CA) certifying the following:
- a. The Noticee has refunded the consultancy fee of Rs. 2,11,200/- to its respective clients.
 - b. Rs. 2,86,794/- had been received by the Noticee in his bank accounts as deposits/ income from activities other than financial services.
11. I note that the date mentioned on the said certificate of Chartered Accountant is December 17, 2012, however, on verification of UDIN mentioned on the said CA certificate, from the website of ICAI, it is found that the correct date of the said certificate is January 16, 2023. I note that the certificate of the Chartered Accountant itself clearly states that the Noticees received Rs. 2,86,794/- in the two bank accounts towards activities other than investment advisory/ financial services whereas Noticees is claiming Rs. 17,30,918.6/- as the amount towards such activities. The claims made by the Noticees and the certification given by Chartered Accountant regarding non-fees credits received by the Noticees are at huge variance. Thus, the claims made by the Noticees are liable to be rejected on this ground alone. However, as directed by the Hon'ble SAT, I have gone into the affidavits filed by the Noticees and all the material produced before me to ascertain the amount of fees collected. The supporting documents submitted by the Noticee along with his affidavits have been perused and the same are being discussed in the following paras.
12. The Noticees have submitted the following affidavits from certain clients of his telemarketing business certifying that the payments made by them to the Noticee were for services other than investment advisory services:

- a. Affidavit dated April 22, 2023 from Mr. Pawan Kumar stating that he had paid Rs. 52,000/- to the Noticee for procuring telemarketing/ digital marketing services.
- b. Affidavit dated April 25, 2023 from Mr. Ankur Patel stating that he had paid Rs. 26,000/- to the Noticee for procuring telemarketing/ digital marketing services.
- c. Affidavit dated January 16, 2023 from Mr. Kamal Rajoria stating that he had paid Rs. 16,000/- to the Noticee for procuring telemarketing/ digital marketing services.
- d. Affidavit dated January 16, 2023 from Mr. Ritesh Vishwakarma stating that he had paid Rs. 25,000/- to the Noticee for procuring telemarketing/ digital marketing services.
- e. Affidavit dated April 25, 2023 from Mr. Abhishek Agarwal stating that he had paid Rs. 37,500/- to the Noticee for procuring telemarketing/ digital marketing services.
- f. Affidavit dated January 16, 2023 from Mr. Dharmendra Bhule stating that he had paid Rs. 5000/- to the Noticee for procuring telemarketing/ digital marketing services.
- g. Affidavit dated April 27, 2023 from Mr. Ashish Malavant stating that he had paid Rs. 10,000/- to the Noticee for procuring telemarketing/ digital marketing services.

Thus, affidavits explaining credits of Rs. 1,71,500/- have been submitted by the Noticee. These payments are also reflected in the bank statements of the Noticees.

- 13. Mr. Santosh Patidar has claimed that certain transactions amounting to Rs. 2,86,394/- appearing in the two bank accounts are his personal transactions such as self-transfer, self-cheque deposit and interest received etc. Such transactions are reflected in the bank statements of the said two bank accounts.

14. Regarding an amount of Rs. 90,200/-, the Noticees have claimed that this amount was showing as debit on a date (November 01, 2014) which was before the opening of the bank account (i.e. November 07, 2014). Therefore, the said debit entry was corrected by the Bank by making a credit entry of Rs. 90,200/. In this regard, I find that there is no such credit entry of Rs. 90,200/- and thus, the said amount is not taken into consideration while computing the amount of total fees. Therefore, the submissions of Noticee regarding amount of Rs. 90,200/- are not tenable.
15. As discussed in para 12 above, the Noticees have submitted affidavits along with bank statements in respect of certain telemarketing clients. However, in respect of certain other entities (claiming to be telemarketing clients of the Noticees), the Noticees have submitted only emails. The following emails have been submitted by the Noticees from the following entities claiming to be clients of the Noticees stating that the amount paid by them to the Noticees were with respect to non-investments advisory (telemarketing) services provided by the Noticees (payments for orders placed by them for computers and computer accessories). These transactions have also not been certified by the Chartered Accountant as credits for non- investment advisory activities. In addition to the above, on a perusal of the said emails, *prima facie* certain discrepancies come to light:
- A. The email dated April 22, 2023 from Ankit Mandloi has been submitted stating that Rs. 70,000/- has been paid by Ankit Mandloi to Mr. Santosh Patidar through several cash deposits for buying computer and computer accessories. In this regard, I note that, Mr. Mandloi lives in Mumbai while Mr. Santosh Patidar is located in Indore. It is not likely that a person residing in Mumbai will purchase computers from a vendor in Indore. Secondly, the credit of Rs. 5,000/- each on the dates September 24, 2014 and September 30, 2014 have been through cash deposits in Lake Town, Kolkata while the deposit dated December 20, 2014 is made

in ATM in Dombivali, Thane. There has been no explanation as to why a person residing in Mumbai was buying computer from a vendor in Indore and thereafter making payments through cash deposits in Kolkata.

- B. An email dated April 25, 2023 has been submitted which is from one Mr. Balram Bhai stating that he has paid Rs. 74,000/- to Mr. Santosh Patidar through several transactions for buying computer and computer accessories. In this regard, it is noted that Mr. Balram Bhai lives in Ahmedabad and his payment is through cash deposits all across India. For example, a deposit of Rs. 5,000/- on June 13, 2014 is in Pune, a deposit of Rs. 3,000/- on September 11, 2014 is in Surat while his deposit of Rs. 2,000/- on January 22, 2015 is in Rajasthan. There has been no explanation as to why a person residing in Ahmedabad was buying computer from a vendor in Indore and thereafter making payments through cash deposits in Pune/ Rajasthan/ Surat.
- C. An email dated April 24, 2023 has been submitted which is from one Mr. Vikas Jagtap stating that he has paid Rs. 92,440/- to the Noticee's ICICI Bank Account through several transactions and Rs. 20,000/- to the Noticee's HDFC account (one transaction on January 30, 2015) for buying computer and computer accessories. In this regard, it is noted that Mr. Jagtap lives in Badlapur, Maharashtra and one of his payments dated August 7, 2014 for Rs. 5,000/- is a cash deposit in Satara (230 Km from Badlapur) while deposits of Rs. 5,000/- on July 23, 2015 and for Rs. 2,940/- on August 03, 2015 is at Sangli (350 Km from Badlapur). There has been no explanation as to why a person residing in Badlapur, Maharashtra was buying computer from a vendor in Indore and thereafter making payments through cash deposits in Satara and Sangli.
- D. An email dated April 29, 2023 has been submitted which is from one Mr. Kartik Pandey stating that he has paid Rs. 50,500/- to Mr. Santosh Patidar in his ICICI Bank Account and HDFC Bank Account for buying computer and computer accessories. In this regard, it is noted that Mr.

Pandey lives in Indore and one of his payments dated January 13, 2015 for Rs.6,000/- is a cash deposit in Hoshiarpur, Punjab and his payments of Rs. 5,000 on May 05, 2015, Rs. 10,000/- on March 30, 2016 and Rs. 27,000/- on April 08, 2016 are through cash deposits in Kundli, Sonapat. There has been no explanation as to why Mr. Pandey who lives in Indore was depositing cash in Punjab and Haryana.

- E. An email dated April 30, 2023 has been submitted which is from one Mr. Pulkit Agarwal stating that he has paid Rs. 43,000/- to Mr. Santosh Patidar in his ICICI Bank Account for buying computer and computer accessories. In this regard, it is noted that Mr. Agarwal lives in Delhi and there has been no explanation as to why a person residing in Delhi was buying computer from a vendor in Indore.
- F. An email dated April 28, 2023 has been submitted which is from one Mr. Shubham Jagirdar stating that he has paid Rs. 68,500/- to Mr. Santosh Patidar in his ICICI Bank Account for buying computer and computer accessories. In this regard, it is noted that Mr. Shubham Jagirdar lives in Chennai and one of his payments dated June 12, 2014 for Rs. 4,000/- is a cash deposit in Vytial Kochi, Kerala while his cash deposits of Rs. 5,000/- and Rs. 2,000/- on February 20, 2015 and May 07, 2016 , respectively are in Salem, Tamil Nadu (344 Km from Chennai). There has been no explanation as to why a person residing in Chennai was buying computer from a vendor in Indore and thereafter making payments through cash deposits in Kochi and Salem.
- G. An email dated April 29, 2023 has been submitted which is from one Mr. Satish Patidar stating that he has paid Rs. 40,000/- to Mr. Santosh Patidar in his ICICI Bank Account for buying computer and computer accessories. In this regard, it is noted that Mr. Satish Patidar lives in Madhya Pradesh but one of his payments dated April 22, 2014 for Rs. 3,000/- is a cash deposit in Palghar, Maharashtra. Another payment dated May 28, 2014 is a cash deposit in Lawspet, Puduchery. On June 26, 2014 there were two cash deposits from him for Rs. 2,000/- each in

Kashipur, Katortal, Uttarakhand as well as Achalpur (which can be either in Uttar Pradesh or Maharashtra). On October 17, 2014 there were cash deposits by him for Rs. 2,000/- in Jaipur and on October 22, 2014 his cash deposit of Rs. 2000 was in Jodhpur. Mr. Satish Patidar deposited Rs. 1,000/- in cash on November 18, 2014 in Chhani, Gujarat. There are similar cash deposits by Mr. Satish Patidar throughout the country. There has been no explanation as to why Mr. Satish Patidar was making payments through cash deposits from different parts of India.

- H. An email dated April 22, 2023 has been submitted which is from one Mr. Rajat Kumar stating that he has paid Rs. 38,000/- to Mr. Santosh Patidar in his ICICI Bank Account for buying computer and computer accessories. In this regard, it is noted that Mr. Rajat Kumar lives in Pune and one of his payments dated June 30, 2014 for Rs. 25,000/- is a cash deposit in Jalandhar while his cash deposits of Rs. 5,000/- and Rs. 3,000/- on December 16, 2014 and May 01, 2015, respectively are in Jalgaon, Maharashtra (around 390 Km from Pune). There has been no explanation as to why a person residing in Pune was buying computer from a vendor in Indore and thereafter making payments through cash deposits in Jalandhar/ Jalgaon.
- I. An email dated April 25, 2023 has been submitted which is from one Mr. Shivpal Rajput stating that he has paid Rs. 52,000/- to Mr. Santosh Patidar in his ICICI Bank Account for buying computer and computer accessories. In this regard, it is noted that Mr. Rajput lives in Madhya Pradesh but he has made payments to the Noticee through cash deposits in various parts of India such as Bareilly, Kanpur, Agra, Sitapur and Khair (Aligarh district). There has been no explanation as to why a person residing in M.P. was making payments through cash deposits in various parts of India.
- J. An email dated April 23, 2023 has been submitted which is from one Mr. Animesh Dubey stating that he has paid Rs. 67,000/- to Mr. Santosh Patidar in his ICICI Bank Account for buying computer and computer

accessories. In this regard, it is noted that Mr. Dubey lives in Panvel, Maharashtra and there has been no explanation as to why a person residing in Panvel was buying computer from a vendor in Indore.

- K. An email dated April 22, 2023 has been submitted which is from one Mr. Nishant Gupta stating that he has paid Rs. 24,500/- to Mr. Santosh Patidar in his ICICI Bank Account for buying computer and computer accessories. In this regard, it is noted that Mr. Gupta lives in Dabra, M.P. but he has made payments to the Noticee through cash deposits in Raipur (811 Km from Dabra). There has been no explanation as to why a person residing in Dabra was making payments through cash deposits in Raipur.

The above-mentioned discrepancies were brought to the attention of the Noticees during the personal hearing dated May 17, 2023 and the Noticees were advised to submit further explanation/affidavit explaining the same.

16. Mr. Santosh Patidar, along with his own affidavit dated May 24, 2023 have submitted handwritten bill copies from the vendor P and P Computers purportedly for raw materials purchased by the Noticee for assembling computers. Additional emails from the following clients have also been submitted: Vikas Jagtap, Ankit Madloi, Balram Bhai, Satish Patidar, Shubham Jagirdar, Rajat Kumar, Shivpal Rajput, Pulkit Agarwal, Kartik Pandey. Except for Vikas Jagtap, all the clients have taken a similar contention that they had bought computers and accessories from the Mr. Santosh Patidar and paid in installments and they had been travelling for work or personal reasons and deposited money during their travels. Vikas Jagtap has stated that he bought some electronic products from the Mr. Santosh Patidar on commission and used to sell these products to his customer in Maharashtra where he used to travel for work and from where he used to collect payment from the clients and used to deposit cash amount from the same location in the bank account of the Noticees.

17. From the submissions above, I note that all the 9 entities who have claimed to have paid cash to Mr. Santosh Patidar through cash deposits in the bank account of the Noticees from different parts of India, other than their own place of residence, have submitted that they were travelling due to work in those parts of the country at the relevant time and therefore, deposited the money in those places. I find that it is highly unlikely that all 9 clients chose to pay the Noticees by cash deposits, by travelling to branches of the Noticee's bank in faraway places other than their places of residence. This gives rise to an inference that the explanation put forward by the Noticees is an afterthought to portray the fees received as the payment received towards sale of computer hardware. Secondly, a comparison between the payments made by the clients who have submitted affidavits (7 clients as mentioned in para 12 above) and these clients who have submitted emails, it is observed that the deposits in various parts of India have been made from the purported clients who have submitted emails. With respect to the telemarketing clients who have submitted affidavits, their respective entries in bank account statements of the Noticees shows transaction remarks mostly as 'by cash' or 'CAM', etc. whereas for those clients who have given emails, the transaction remarks in the bank statement of Noticee mentions "cash" alongwith the location from where it was deposited. Seen holistically, the submissions of all these 9 clients reveal an inexplicable pattern: purchase of computer from a place far away from their place of residence and thereafter, paying for the same through cash deposits in another faraway place other than their place of residence. This pattern has not been suitably explained by the Noticees and the explanation furnished by these clients are found to be an afterthought. It cannot be accepted that all of them had travelling jobs and were in the habit of depositing money for computer purchases while travelling. I also note that the Noticees have submitted certain handwritten bills issued purportedly by the vendors of raw material for their computer business. The Noticees have not identified the corresponding bank transactions, nor have they provided VAT payment details for the same. In view of the above-mentioned discrepancies in the emails, purportedly from the

Noticees' clients, submitted by the Noticees, I find that the Noticees have not been able to show the credits to the tune of Rs. 6,19,940/- were for telemarketing business, as claimed by them and not towards unregistered investment advisory.

18. From a perusal of the material submitted by the Noticees, I am inclined to accept the explanation for the following amounts, for which the Noticees have submitted affidavits from such entities which are backed by entries in the bank accounts as under:
- a. Rs. 2,86,794/- had been received by the Noticee in his bank accounts as deposits/ income from activities other than financial services, as supported by the certificate of the Chartered Accountant. Out of this, credits of Rs. 1,71,500/- which had been received by the Noticee in connection with his telemarketing business is supported by affidavits from clients.
 - b. The Noticee has refunded the consultancy fee of Rs. 2,11,200/- to its respective clients, as supported by the certificate of the Chartered Accountant.
 - c. The credits to the tune of Rs. 56,317/- in HDFC bank account for personal purposes.
 - d. The credits to the tune of Rs. 2,30,077/- in the ICICI Bank account for personal purposes.

Thus, I am inclined to accept the Noticees' explanation related to an amount of Rs. 7,84,388/-. I also note that the Noticees have submitted an affidavit from one Mr. Venkateshwar Rao who availed of the unregistered investment advisory services from the Noticee stating that he had paid Rs. 2,72,800 as fees to the Noticee which he does not want a refund of. I also find that the Noticees were given an opportunity to submit affidavit from the respective customers backed by corresponding bank statements and explain the discrepancies in the submissions made by them with respect to the remaining

amount. However, they have failed to provide adequate documents/ explanations for the remaining amount.

19. In view of the discussions in the previous paras, I find that an amount of Rs. 11,83,799.63/- collected by the Noticee were *in lieu* of the unregistered investment advisory services provided by Mr. Santosh Patidar and has to be refunded in terms of the Final Order, by which the Noticees were *inter alia* directed to refund the money received from clients/complainants/investors as fee or consideration or in any other form towards the advisory services provided by the Noticees. The Noticees were also directed to file a report, duly certified by an independent Chartered Accountant, detailing the amount refunded. In view of the above, the Noticees are at liberty to provide necessary proof in support of their refund claims to the independent Chartered Accountant and the same may be considered by the independent Chartered Accountant while certifying the refunds made by the Noticees.
20. In view of the aforesaid, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4) and 11B (1) of the SEBI Act, 1992 read with Section 19 thereof, hereby direct that the amount of refund in terms of Para 19(a) of the Final Order shall be Rs. 11,83,799.63/-. Except the amount to be refunded, as modified by this order, all other directions given in the Final Order remain unchanged.
21. The direction given in para 20 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.
22. This order comes into force with immediate effect.

23. 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.

Date: June 07, 2023

Place: Mumbai

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**