

SECURITIES AND EXCHANGE BOARD OF INDIA

ENQUIRY ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and Regulation 28 of Securities and Exchange Board of India (Investment Advisers) Regulation, 2013.

IN RESPECT OF:

NOTICEE	SEBI Registration No.	PAN
Mr. Prashant Gole (Proprietor of M/s Capital Grow Financial Services)	INA000001480	BAAPG4714Q

In the matter of Mr. Prashant Gole (Proprietor of M/s Capital Grow Financial Services)

Background:

1. Mr. Prashant Gole (Proprietor of Capital Grow Financial Services) (hereinafter referred to as the '**Noticee**') registered with SEBI as an Investment Advisor ("**IA**") having SEBI registration number **INA000001480**, under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "**IA Regulations**") with effect from April 09, 2014. As per the records and website of SEBI, the Registered address at '*308, Gold Coin Plaza, Tower Square, Indore, Madhya Pradesh, 452001*' and the correspondence address is '*16 Sanchar Nagar Ext., Near Karnataka School, Kanadia Road, Indore, Madhya Pradesh – 452016*'.
2. Securities and Exchange Board of India ("**SEBI**"), noticed certain irregularities in the affairs of the Noticee such as allegedly failing to resolve the investor grievance, making false commitments to the clients by promising assured profits and unrealistic returns knowingly well that all the investment in securities market are subject to market risk and failed to submit Action Taken Report (**ATR**) in time bound manner. As these alleged acts of the Noticee was in violation of the provisions of

the SEBI Act, Rules and Regulations made there under. Accordingly, SEBI had initiated the adjudication proceeding against the Noticee vide SCN dated July 29, 2022. However, due to incomplete address, not only the SCN served through SPAD had returned undelivered but also SCN sent vide e-mail bounced back. Thereafter, it was finally served by way of affixture at the registered office of the IA with an advice to file a reply by October 17, 2022, however affixture could not be carried out at the correspondence address due to incomplete address. As there was no response received from the Noticee with regard to the SCN and he had also not availed the opportunity of personal hearing, an ex-parte order dated January 03, 2023, was passed against the Noticee levying a penalty of Rs.1,00,000/- under Section 15C of SEBI Act for failing to resolve investor grievance and a penalty of Rs.5,00,000/- under Section 15HA of the SEBI Act for fraudulently dealing with his clients.

3. Subsequent to the passing of the above said adjudication order, the Noticee vide letter dated February 13, 2022 had requested SEBI to provide certified true copy of the said adjudication order and mentioned his postal address for further communication as *"617, Panchvati Colony, AB Road, Indore, Madhya Pradesh."*
4. As the said address of the Noticee differs from both the registered address and correspondence address available in the record of SEBI, an examination was conducted to look into the activities of the Noticee in the matter. During the examination certain prima facie violations of IA Regulations, SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as **"Intermediaries Regulations"**) were observed. The details of which are as under:
 - 4.1. Noticee no longer operated from the address available in the records of SEBI and deliberately did not intimate/take approval for change in address.
 - 4.2. Noticee did not submit periodic quarterly reports for the quarters April–June 2021, July–September 2021, October – December 2021, January– March 2022, April–June 2022 and July–September 2022.
 - 4.3. Noticee as a SEBI registered IA had not obtained membership from BASL as per SEBI's Press Release no. 21/2021 dated June 14, 2021, till date.

5. The above-mentioned observations led to the initiation of enquiry proceedings against the Noticee in terms of the Intermediaries Regulations and accordingly, a Designated Authority (hereinafter referred to as the “**DA**”) was appointed in the matter to inquire into and submit a report pertaining to the probable violations of the following provisions of IA Regulation and Circulars made there under:

- 5.1. Regulation 13(a), 13(b), 15(12) and Clause 8 of Code of Conduct specified as specified in the Third Schedule of IA Regulations.
- 5.2. SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021, read with SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/622 dated August 31, 2021

Enquiry by the Designated Authority:

6. The DA issued a Show Cause Notice dated September 22, 2023 (hereinafter referred to as “**SCN**”) under Regulation 25(1) of Intermediaries Regulations as specified in Regulation 26 of IA Regulations read with Regulation 23 of Intermediaries Regulations and Section 12(3) of SEBI Act, calling upon the Noticee to show cause as to why appropriate recommendations for the alleged violations should not be made against him. The delivery of the SCN to the Noticee was attempted several times at the aforesaid registered and correspondence addresses available on record but it could not be served. Finally, the said SCN was served to the Noticee vide SPAD at the address as specified vide his letter dated February 13, 2022, while seeking the certified copy of the adjudication order as well as through e-mail. Since the Noticee, had not submitted his reply even after the 14 days from the receipt of the SCN, in the interest of natural justice Hearing Notice dated October 09, 2023 was served on the Noticee through digitally signed email as well as by SPAD to appear on October 16, 2023. However, the Noticee failed to attend the said scheduled hearing. Once again hearing was scheduled on October 25, 2023 but he did not attend the hearing stating that the hearing notice was received by him only on October 26, 2023. Thereafter, another opportunity of personal hearing was granted to the Noticee on November 08, 2023, vide hearing notice dated

November 01, 2023, which was attended by the Authorized Representative (AR) of the Noticee, wherein oral submissions were made.

7. Finally, after taking into consideration the material available on record as well as the oral submissions made by the Noticee, the DA has submitted an Enquiry Report dated November 17, 2023 (hereinafter referred to as “**Enquiry Report**”) recommending the punitive action in the form of cancellation of certificate of registration of the Noticee, i.e., M/s Capital Grow Financial Services, (Proprietor Mr. Prashant Gole) [SEBI Registration. No. INA000001480] as an Investment Advisor under Regulation 26(1)(ii) of the Intermediaries Regulations read with Regulation 28 of IA Regulations.

Post Enquiry Proceedings:

8. Thereafter, a post-enquiry Show Cause Notice dated December 01, 2023 (hereinafter referred to as “**Post Enquiry SCN**”) was issued to the Noticee enclosing a copy of the Enquiry Report dated November 17, 2023, submitted by the DA, calling upon him to show cause in terms of Regulation 27 of the Intermediaries Regulations as to why actions as recommended by the DA should not be taken against the Noticee in terms of the said Regulations.
9. The Post Enquiry SCN was issued to the Noticee through SPAD and e-mail dated December 07, 2023. While the SCN issued by SPAD was duly delivered, the SCN served vide e-mail dated December 07, 2023 at email id – info@capitalgrow.in bounced back. Thereafter, as there was no response received even after 21 days of receipt of the SCN, in terms of Regulation 27(4) of the Intermediaries Regulations, an opportunity of personal hearing to the Noticee was granted on March 05 2024, vide e-mail dated February 26, 2024 at the above mentioned e-mail id. The said notice was duly delivered. Thereafter, the Noticee himself appeared on the scheduled date of personal hearing and made an oral submission that presently, as he is not doing any Investment Advisory activities and also does not want to continue the business anymore, if SEBI

cancels his registration he may not have any objection on the same. In this regard, subsequently, on the same day, the Noticee vide e-mail confirmed the same.

Consideration of Issues and Findings:

10. After considering the allegations levelled in the post enquiry SCN against the Noticee including the Enquiry Report and replies filed i.e. oral submission made before the DA, the documents / material available on record, the following issues arise for consideration;

Issue No. I: Whether

- a) the Noticee failed to furnish information regarding his change in address thereby leading to violation of provisions of Regulations 13(a) , 13(b) and 15(12) of IA Regulations and Clause 8 of Code of Conduct specified in the third schedule of IA Regulations?***
- b) the Noticee did not submit periodic reports for consecutive quarters and thereby leading to violation of provisions of Regulations 13(a), 13(b) and 15(12) of IA Regulations and Clause 8 of Code of Conduct specified in the third schedule of IA Regulations?***
- c) the Noticee did not obtain membership from BASL and thereby leading to violation of provisions of SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021, read with SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/622 dated August 31, 2021?***

Issue No. II: *If the issue(s) framed above are answered in affirmative, whether the Noticee is liable for action under Regulation 26 of the Intermediaries Regulations?*

11. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the IA Regulations alleged to have been violated by the Noticee. The same are reproduced herein below:

IA Regulations

Regulations 13(a) , 13(b) and 15(12) of IA Regulations and Clause 8 of Code of Conduct specified in the third schedule of

Conditions of certificate.

13. The certificate granted under regulation 9 shall, *inter alia*, be subject to the following conditions:-

- (a) the investment adviser shall abide by the provisions of the Act and these regulations;
 - (b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;
- General responsibility

15. (1)

.....

(12) Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[See sub-regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

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8. Compliance

An investment adviser including its 85[partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

....

12. I note that multiple allegations have been alleged against the Noticee and for the sake of convenience and clarity, I shall deal with each of the allegations independently in the following paragraphs.

Issue No. I(A): Whether the Noticee failed to furnish information regarding his change in address thereby leading to violation of provisions of Regulations 13(a) , 13(b) and 15(12) of IA Regulations and Clause 8 of Code of Conduct specified in the third schedule of IA Regulations?

- i. With regard to the above allegation, I note that Noticee did not submit any information regarding change in his address neither when he moved from his registered address nor during the time of said AO proceedings. It was therefore alleged that Noticee was no longer operating from the addresses available in the SEBI records and deliberately did not intimate/take approval for change in address and the same was in the violation of Regulation 13(a),13(b), 15(12) and Clause 8 of Code of Conduct specified in Third schedule of IA Regulations.
- ii. In this regard I note that according to Regulation 13(a) of IA Regulations, the certificate granted under Regulation 9 specified the condition that the IA shall abide by the provisions of SEBI Act and IA Regulations. Also, as per Regulation 13(b) of IA Regulations, an IA is under an obligation to forthwith inform the SEBI in writing, if any information or particulars previously submitted to the SEBI are found to be false or misleading in any material particular or if there is any material change in the information already submitted. Further, Clause 8 of Code of Conduct specified in the third schedule of IA Regulations states that *“An investment adviser including its partners, principal officer and persons associated with investment advice shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market”*.
- iii. In respect of the above, I note that the Noticee has not made any submissions in defence to the said allegation. In this regard, I note that, the Noticee is a registered intermediary with SEBI since April 09, 2014 and remains to be one as on date as per SEBI records. Additionally, I also note that the registered address of the Noticee is ‘308, Gold Coin Plaza, Tower Square, Indore’, while the correspondence address of the Noticee is ‘16, Sanchar Nagar Ext., Near Karnataka School, Kanadia Road, Indore, Madhya Pradesh – 452016’ as per the records of SEBI. Further, I also note that during the adjudication proceedings the notices and the order were attempted to be served to the Noticee on the aforesaid two addresses. However, it could not be served through SPAD or e-mail and was finally served by way of affixture at the registered office of the IA.

- iv. Further, I note that, during the DA proceedings, the AR of the Noticee has made oral submissions that Noticee was not functioning as IA since the first outbreak of the coronavirus pandemic i.e. from March 2020 onwards. The address, '*617, Panchavati Colony, A. B. Road, Indore, Madhya Pradesh*', is the residential address of the proprietor of Noticee i.e., Mr. Prashant Gole. However, I note that the said residential address of the Noticee was not available with SEBI until passing of the adjudication order dated January 03, 2023.
- v. With regards to the above allegation, the DA has taken into consideration the facts surrounding the adjudication proceedings, the Noticee's oral submission made during the DA proceedings and found that there has been no change in his postal address and has accepted the submission of the Noticee.
- vi. Consequently, I note that even though there has been no technical change in the address of the Noticee, the fact that he has closed his business since March 2020 and was not available at the registered or correspondence address available with SEBI, ought to have been communicated to SEBI as per the IA Regulations. Also, considering the fact that the Noticee is still a registered intermediary with SEBI as on date and has not taken steps to suspend or cancel his registration. As a registered IA, the Noticee has a responsibility to have abided by the above mentioned provisions of law.
- vii. In light of the above observations, I find that the Noticee has thereby violated Regulations 13(a), 13(b), 15(12) and Clause 8 of Code of Conduct specified in Third schedule of IA Regulations.

Issue No. I(B): Whether the Noticee did not submit periodic reports for consecutive quarters and thereby leading to violation of provisions of Regulations 13(a) , 13(b) and 15(12) of IA Regulations and Clause 8 of Code of Conduct specified in the third schedule of IA Regulations?

- i. SCN has also alleged that the Noticee did not submit periodic quarterly reports for the quarters April–June 2021, July–September 2021, October – December 2021, January– March 2022, April–June 2022 and July–September 2022 with SEBI.
- ii. With regard to the same, I note that during the DA proceedings, the Noticee has contended that SEBI has not laid down any requirement on IAs to submit quarterly reports to it and intermediaries' portal was closed. Accordingly, the DA has observed that the SCN has not specified any provision of SEBI Act, Rules, Regulations and Circulars made thereunder, which places an onus on an IA to submit quarterly reports to SEBI. In light of the same, the DA was unable to ascertain the reports that IA is required to submit to SEBI on a quarterly basis or nature of such quarterly reports. Accordingly, the DA was inclined to give benefit of doubt to Noticee, while finding that the said allegation does not stand established.
- iii. In this regard, I agree with the findings of the DA that the SCN is unclear on the type/ nature of the quarterly reports that have to be submitted by the Noticee as a registered IA. Therefore, I find that the allegation in the SCN that Noticee has violated Regulations 13(a) , 13(b) and 15(12) of IA Regulations and Clause 8 of Code of Conduct specified in the third schedule of IA Regulations does not stand established.

Issue No. I(C): Whether the Noticee did not obtain membership from BASL and has violated provisions of SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021, read with SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/622 dated August 31, 2021?

- i. SEBI's Press Release no. 21/2021 dated June 14, 2021, *inter-alia*, published the following:
 - a. BSE Administration & Supervision Limited (BASL), a subsidiary of BSE Limited (BSE), has been granted recognition for administration and supervision of IAs.
 - b. In view of the experience gained while regulating IAs and in order to strengthen the regulatory framework for IAs, SEBI Board in its meeting held

on December 16, 2020 approved amendment to IA Regulations, requiring IAs to seek membership of a separate body recognised by SEBI for administration and supervision.

- c. All existing SEBI registered IAs shall be required to seek membership of BASL. Further, new applicants shall be required to obtain membership of BASL before applying for registration with SEBI as IA.
- ii. Subsequently, SEBI, vide circular no. SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021, *inter-alia*, prescribed the following:
 - BASL has been granted recognition as IAASB for a period of three years from June 01, 2021.
 - In order to ensure compliance with Regulation 6(n) of the IA Regulations and to keep their registration in force, existing IAs shall seek membership of IAASB in such manner as may be specified by the IAASB, within three months of the recognition of IAASB by SEBI.
- iii. In view of the above provisions, existing IAs were required to seek membership of BASL-IAASB latest by August 31, 2021, the time line of which was later extended by two months till October 31, 2021 by SEBI, vide circular no. SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/622 dated August 31, 2021. It was also specified vide the said circular that existing IAs who fail to seek membership of BASL within the aforesaid timeline would be liable for appropriate action including suspension or cancellation of certificate of registration of such IAs, in terms of the SEBI Act and the Regulations framed thereunder.
- iv. Thus, Noticee, being an IA, was under an obligation to obtain membership of BASL in terms of Regulation 14(3) of IA Regulations read with SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021 read with SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/622 dated August 31, 2021.
- v. In this regard, it was observed that vide email dated March 14, 2023, BASL was requested to confirm whether the Noticee had obtained membership of BASL. In

response, vide email dated March 14, 2023, BASL submitted to SEBI that Noticee had not obtained membership of BASL.

- vi. With regard to the same, the DA noted that Noticee admitted to not obtaining the membership from BASL as on that date and also stated that the above mentioned circulars came into force when Noticee has closed his business and thus, Noticee was not aware of requirement of obtaining the membership of BASL. Based on the clear admission by Noticee and the information received from BASL, the DA concluded that Noticee has not obtained membership of BASL.
- vii. In this regard, I note that the Noticee has not made any specific submission with respect to the said allegation. In view of the above facts and circumstances, I agree with findings of the DA that since the Noticee had closed his business he was not aware of the requirement of obtaining the membership of BASL. Thus, I find that allegation in the SCN that Noticee has violated the provisions of SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021, read with SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/622 dated August 31, 2021 stands established.

Issue No. II: If the issue(s) framed above are answered in affirmative, whether the Noticee is liable for action under Regulation 27 of the Intermediaries Regulations?

13. In view of the facts and circumstances of the case, material placed before me as discussed above and the violations as brought out above, I find that the violations by the Noticee are grave in nature and the acts of Noticee are detrimental to the interest of the investors in the securities market. Further, during the said proceedings the Noticee pursuant to the personal hearing held on March 05, 2024, vide his e-mail on the same day stated that "he is not operating as an Investment Adviser and hence has no issue/objections if SEBI cancels/suspends his certificate of registration." Thereafter, I also note that SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021, read with SEBI Circular SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/622 dated August 31, 2021, specifies that existing IAs who fail to seek membership of BASL within the

aforesaid timeline would be liable for appropriate action including suspension or cancellation of certificate of registration of such IAs, in terms of the SEBI Act and the Regulations framed thereunder. Taking into consideration the above, I find that the Noticee is liable for action under the Intermediaries Regulations and I am of the opinion that cancellation of the Certificate of Registration of the Noticee, may meet the ends of justice.

14. Therefore, I agree with the recommendations given by DA vide report dated November 17, 2024 that a direction of cancellation of the registration of the Noticee (having SEBI registration number – INA000001480), seems to be appropriate

Directions:

15. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 12(3) of SEBI Act, 1992 and Section 19 of SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations and Regulation 28 of the IA Regulations, hereby cancel the Certificate of Registration of the Noticee i.e. Mr. Prashant Gole (Proprietor of M/s Capital Grow Financial Services), having SEBI registration number – INA000001480.

16. This order comes into force with immediate effect.

17. A copy of this order shall be forwarded to the Noticee.

DATE: March 15, 2024

PLACE: Mumbai

G. RAMAR

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA