WTM/AN/SRO/SRO/29100/2023-24

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

Sl. No.	Name of the Noticee	PAN
1	GJ Advisory Services and its Proprietor Mr. Gourav Jain	AEMPJ7099E
2	Profit Ideas Advisory Services and its Proprietor Ms. Poonam Jain	AFMPT0902K

*(The above entities are individually referred to by their corresponding names / numbers and collectively referred to as "**Noticees**")*

In the matter of GJ Advisory Services and Profit Ideas Advisory Services

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A. Background

1. The Securities and Exchange Board of India ("**SEBI**") has received complaints against GJ Advisory Services ("**GJ Advisory / firm**") and Profit Ideas Advisory Services ("**Profit Ideas / firm**") *inter alia* alleging that they are indulging in unregistered Portfolio Management Services ("**PMS**"). Pursuant to the complaints, SEBI had issued an *ad interim ex parte order* cum show cause notice dated January 4, 2021 ("**Interim Order**") against GJ Advisory and its proprietor, Mr. Gourav Jain and Profit Ideas and its proprietor, Ms. Poonam Jain.

Interim Order

2. It was *prima facie* noted in the Interim Order that the Noticees were carrying out the activities of a Portfolio Manager which were *prima facie* in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993

(since repealed) ("**PMS Regulations, 1993**") and had *prima facie* collected INR 8,89,23,049/- through their activities. The said activity was carried on during the period May 29, 2017 to February 2020.

3. Vide the Interim Order, "GJ Advisory" and its proprietor, Mr. Gourav Jain and "Profit Ideas" and its proprietor, Ms. Poonam Jain, were *inter alia* directed to cease and desist from acting as a portfolio manager including the activity of acting and representing through any media (physical or digital) as a portfolio manager, directly or indirectly and were also directed to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc., physical or digital, if any, in relation to their Portfolio Management Services ("**PMS**") activity or any other unregistered activity in the securities market until further orders. Further, the Noticees were directed not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.

B. Show Cause Notice, Reply and Hearing

4. The Interim Order was also in the nature of a show cause notice wherein the Noticees were provided with the opportunity to file their reply, if any, within 21 days from the date of service of the Interim Order. Further, the Noticees were also provided with an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request to be made by the Noticees. The Interim Order was served upon all the Noticees.

5. Pursuant to the service of the Interim Order, the Noticees vide their letter dated January 19, 2021 had requested to conduct an inspection of the documents in the matter. The request of the Noticees was acceded to and the Noticees had conducted their inspection in the matter on July 14, 2021. Subsequently, Noticees

were granted an opportunity of hearing on October 18, 2022, which was adjourned upon a request made by the Noticees.

6. In response to the Interim Order, Noticees vide their letters dated November 28, 2022 submitted their detailed reply. The submissions made by both the Noticees were on similar lines and are summarized below:

6.1. SEBI has relied on the alleged screen shots provided by complainants of messages purportedly exchanged between the Noticees and them through a mobile application named Telegram to come to a finding that the Noticees had indulged in PMS activities. The record however shows that SEBI did not examine the original messages or the mobile or other equipment on which such messages were displayed.

6.2. No certificate under Section 65B (4) of the Indian Evidence Act,1872 was obtained or even sought by SEBI from the complainants to verify that the electronic record that was being proffered by them as proof of wrong doing by the Noticees was credible or reliable.

6.3. Additionally, the said alleged screen shots cannot be relied upon for *inter alia* the following reasons:

6.3.1. A bare reading of the alleged screen shots shows that the records have been tampered with. Certain messages have been deleted on 21 instances. Further, in the said record, the same text with varying time stamps appear on pages 2, 3, 7, 12, 13, 16, 18, 21, 24 and 25.

6.3.2. The Noticee (Ms. Poonam Jain) denies that she runs or ran the purported Telegram Channel with the name "NEHA0103".

6.4. The Noticees were not provided with the original documents at the time of inspection. Further, they have also not been provided with the copy of the Examination Report.

6.5. The proprietorship firms are engaged in businesses such as providing alerts with regard to the stock market and market data, personal messaging services, stock market training services, global market updates, online courses, etc. The services included providing training material, result update/corporate action about listed companies, etc. The Noticees have not provided any BUY/SELL, STOP LOSS, TARGET or HOLD recommendations to any of their clients. The purpose of Noticees business was to pass information and generate alerts that were easily available on various public domains.

6.6. Ms. Poonam Jain has done Certificate Courses in Currency Derivatives, Mutual Fund Distributors and Securities Operations and Risk Management from National Institute for Securities Markets while Mr. Gourav Jain has done Certificate Courses in Equity Derivatives and Mutual Fund Distributors from National Institute for Securities Markets.

6.7. The complainant, had transferred money to GJ Advisory and to Profit Ideas towards receiving stock alerts through personal messaging services etc.

6.8. GJ Advisory and Profit Ideas are not connected with each other and the Noticees are not connected with the Telegram channel, NEHA0103.

6.9. It is pertinent to clarify that the words ‘PMS' are misconstrued as "Portfolio Management Services'. ‘PMS' as per Noticees communications with their clients only meant ‘Private Messaging Services' related to stock market alerts. As a matter of express precaution, Noticees have also issued disclaimers to each and every client stating exactly as follows -

"Investment in Stock Market is always subject to market risk &
Your investment can become 0 also
NO Guaranteed Returns, NO Trading Tips
NO Buy & Sell Advice

NO Tgt & SL Views / Alerts completely Personal & ONLY given for Educational Purposes
Act @ UR OWN RISK
Consult your Advisor before Making Decision"

6.10. The purpose of obtaining the ID and password from the clients was not to trade on behalf of the investors. It was only obtained to verify as to whether the one-click BOT software was working for the clients. The said one-click BOT software facilitated clients to place order with just one click. Mr. Gourav Jain has submitted details of Paytm transactions (2 in nos.) made to Mr. Deepak Kumar to show payment was made for software.

6.11. The following 4 points were informed to each and every client of the Noticees:

6.11.1."Alerts are purely given only for an Educational purpose.

6.11.2.We will not be responsible for any of your profit or loss due to any of our alerts / views / observations / commentary represented here on this channel So Trade @ UR OWN RISK, if you want.

6.11.3.On this channel any alerts / views / observations / commentary given, we did not take into the account the investment objectives, financial situation and particular needs of this channel subscriber / viewer.

6.11.4.Please Always consult your financial advisor before making any investment / trading / financial decision."

6.12. With respect to fees collected by Profit Ideas in its HDFC bank account, it is submitted that there is a huge difference between the actual fees collected and the total banking transaction amount. The Noticee denies the allegation of having received an amount of INR 50,68,264/- in its HDFC bank account bearing Account No. 5020XXXXXX3450.

6.13. With respect to the packages referred to in the Interim Order, following may be noted:

6.13.1. Diamond Package - The investors used to get real time alerts about the stock market and the fees were approximately INR 15,000/- for 6 months.

6.13.2. Retail Package - Only basic training material about markets, stocks, etc. was provided to the customers. The training used to be conducted online and an approximate amount of INR 7,500/- was charged as fees for 6 months.

6.13.3. Private Messaging Service - The investors used to get information about Top Gainers, Stock Trading with Huge Volumes, Information about which Stock is trading at Weekly High or Monthly High Level, Volumes > average volumes of past 7 days, Information as to which Sector is Trading High Today, Stock is trading x% up/down from Opening, etc. The fees charged for this Private Messaging Service was approximately INR 25,000/- for 3 months.

6.14. The Noticees have never entered into any agreement, arrangement or contract, whether verbal, oral or written, with a view to advise or direct or undertake on behalf of any investor (neither as discretionary portfolio manager nor otherwise), the management; or administration of any portfolio of any securities or goods or funds of the investors.

7. It is noted from the records that the Noticees had carried out another inspection in the matter on January 5, 2023 wherein they had inspected the Examination Report made in the present matter. Subsequently, Noticees were granted multiple opportunities of personal hearing, which could not take place either because of Noticees adjournment request or due to administrative exigencies. Vide hearing notice dated July 4, 2023, a final opportunity of personal hearing was granted to the Noticees on July 20, 2023. The Authorised Representatives ("**ARs**") of the Noticees appeared for the hearing along with Mr. Gourav Jain. The ARs reiterated the submissions made in the reply dated November 28, 2022. Further, the Noticees stated that they would be making further submissions within a week in the matter.

8. Post hearing, the Noticees vide their letter dated July 31, 2023 while reiterating their earlier submissions *inter alia* made the following submissions:

8.1. The Noticees created channel on Telegram named GJ Advisory and Profit Ideas for posting useful information relating to the securities market which was available in public domain. Since it required effort to collate and present the information, Noticees charged a fee for subscription to the said channels.

8.2. Mr. Gourav Jain has stated that out of INR 8,20,00,953/- deposited in his ICICI bank account and HDFC bank account, INR 1,73,73,366/- is not fees but is the amount received from trading settlement or from family.

8.3. In and around 2021, a fire broke out in the house of the Noticees and consequently, the mobile and laptop of Mr. Gourav Jain was damaged. Therefore, the data relating to the telegram channel was lost.

9. Noticees vide their letter dated August 3, 2023 further submitted that Mr. Gourav Jain had a client base of 6,000 people and Ms. Poonam Jain had a client base of 550 people. However, SEBI has relied upon a few screenshots provided by one complainant. Further, SEBI has not found any website page, products or services provided by him that is similar to the services provided as a Portfolio Manager.

C. Consideration of Issues and Findings

10. Before dealing with the alleged violation of carrying out of unregistered PMS activities by the Noticees, it would be appropriate to refer to the provisions of SEBI Act and PMS Regulations, 1993, which are relevant for determining the said violation. The relevant extracts of these provisions are as under:

SEBI Act

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act::

…

PMS Regulations 1993

2. Definitions.— *In these regulations, unless the context otherwise requires, -*

(a)…

(cb) "portfolio manager" means any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or goods or the funds of the client, as the case may be;

Provided that the Portfolio Manager may also deal in goods received in delivery against physical settlement of commodity derivatives.

3. Registration as portfolio manager.— *No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations:*

...

PMS Regulations, 2020

Repeal and Savings.

42. (1) The Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993, shall stand repealed from the date on which theseregulations come into force.

(2) Notwithstanding such repeal, —(a) anything done or any action taken or purported tohave been done or takenincluding registration or approval granted, fees collected, registration or approval, suspended or cancelled, any adjudication, enquiry or investigation commenced or show-causenotice issued under the repealed regulations, prior to such repeal, shall bedeemed to have been done or taken under the corresponding provisions of these regulations;

11. After considering the SCN and the reply filed by the Noticees, the following issues arise for consideration:

11.1. Whether the Noticees have carried out activities related to PMS?

11.2. Whether, the Noticees have violated the provisions of SEBI Act and PMS Regulations, 1993?

11.3. What directions, if any has to be issued against the Noticees?

12. Upon examining the reply of the Noticees, it is noted that they have raised a preliminary issue that they were not provided with the original documents during inspection and have not been provided with a copy of the Examination Report. The records show that the Noticees have carried out two inspections in the matter and have been shown all the documents which are in possession of SEBI, in original, if available as well as photocopies where original is not in possession of SEBI, in the matter. Further, a copy of the Examination Report has been provided to the Noticees. Therefore, no prejudice has been caused to the Noticees in making their submmisions in the matter.

13. I now proceed to deal with the issues involved in the matter.

Issue No. 1: Whether the Noticees have carried out activities related to PMS?

14. Before proceeding further, it will be relevant here to note the parameters of a protfolio manager as defined under regulation 2 (cb) of PMS Regulations, 1993.

As per the said regulation, for an entity to be categorised as a portfolio manager, following parameters have to be met:

14.1. There has to be a contract or arrangement between the intended portfolio manager and the prospective client.

14.2. The intended portfolio manager would advise the prospective client or would manage the portfolio of securities or funds of his prospective client.

Particulars of the Firms

15. It is noted from the HDFC bank account opening form of "GJ Advisory" and the documents submitted therein by Mr. Gourav Jain that he is the proprietor of "GJ Advisory". Further, "GJ Advisory" was established on April 26, 2018 for carrying out the business of "Financial Adviser and Counselling". With respect to "Profit Ideas", it is noted from its GST Registration Certificate that it is a proprietorship of Ms. Poonam Jain and the said certificate was valid from September 22, 2018. Further, from the document submitted by Ms. Poonam Jain while opening the HDFC bank account of Profit Ideas that the nature of business carried out by Profit Ideas was "Advisory Services".

16. The Noticees have submitted that the firms are not connected with each other and they are not connected with Telegram channel NEHA 0103. I note from the KYC records that Mr. Gourav Jain and Ms. Poonam Jain are married to each other. Further, as noted from the chat excerpt (reproduced below, Figure No. 1) of one of the complainant with Mr. Gourav Jain that upon inquiring whether Profit Idea group is managed by Mr. Gourav Jain, Mr. Gourav Jain replied in affirmative. Thus, not only the firms are closely connected with each other but the properitor of "GJ Advisory" has admitted on record of managing the other firm, Profit Ideas which could only be possible, if he had access to the operations of the latter firm. The connection between the firms does not end here. It is noted based on the incorporation dates of the firms that both had opened within few months of each

other and also share the same registered address including having bank account in the same branch of HDFC Bank. Moreover, the nature of business carried out by the firms, as submitted by the Noticees, is also the same.

Figure No. 1

[11/03/2019, 2:07:42 PM] JD: Hi
[11/03/2019, 2:08:30 PM] JD: I just want to know is this profit idea group is managed by Cg
[11/03/2019, 2:59:17 PM] JD: Are you there
[11/03/2019, 3:20:36 PM] GJ: Cg??
[11/03/2019, 3:21:38 PM] JD: Pleas see my query above
[11/03/2019, 3:22:00 PM] JD: I am talking about the profit ideas group
[11/03/2019, 3:26:29 PM] JD: <attached: 00000078-PHOTO-2019-03-11-15-26-28.jpg>
[11/03/2019, 3:36:01 PM] GJ: What is cg??
[11/03/2019, 3:36:50 PM] JD: Sorry
[11/03/2019, 3:36:59 PM] JD: Gj
[11/03/2019, 3:38:18 PM] JD: Gj advisory group
[11/03/2019, 3:40:17 PM] GJ: Yes
[11/03/2019, 3:41:05 PM] JD: Ok
[11/03/2019, 3:41:26 PM] JD: I thought it's fraud activity
[11/03/2019, 3:42:36 PM] JD: I just wan to know about profit sharing method

17. Before proceeding further, it would be appropriate here to deal with the submission of the Noticees that the alleged screenshots which have been relied upon by SEBI to level the allegation of carrying out of unregistered PMS activities by the Noticees,have not been verified with the original messages. Further, certificate under Section 65B (4) of the Indian Evidence Act,1872 has not been obtained by SEBI. In this regard, I note that the present proceedings have been initiated under Sections 11(1), 11 (4), 11B (1) and 11D of SEBI Act and hence are quasi-judicial proceedings in nature, as held by the Hon'ble Supreme Court of India in the matter of *NSDL* vs. *SEBI and Other Connected Appeal, Civil Appeal No. 5173 of 2006* decided on March 7, 2017. As such, the provisions of the Indian Evidence Act, 1872 are not strictly applicable in the present matter. Here, it would be appropriate

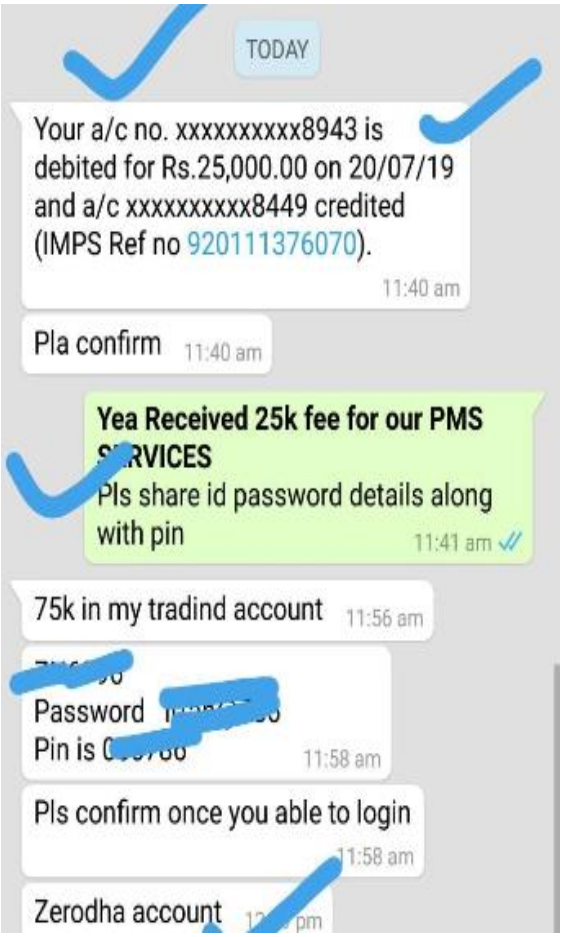
to refer to the order of Hon'ble Supreme Court of India in the matter of *Tata Consultancy Services Limited* vs. *Cyrus Investments Pvt. Ltd.* dated March 26, 2021 wherein it was held as follows:

"It is true that the rigors of CPC and the Evidence Act are not be applicable to Tribunals/Quasi¬Judicial Authorities…"

18. In addition, it is noted from the extracts of the chats that the identity of Mr. Gourav Jain as a participant to the chat can be confirmed based on the fact that he is acknowledging the money received from the client either in his HDFC Bank Account bearing no. 5020XXXXXX8449 or in his ICICI Bank Account bearing no. 0002XXXX1685. The said chats shows that clients have transferred money to Mr. Gourav Jain. The following illustrative chats would show that the funds which have been transferred by the client as stated in the chat, has a corresponding entry in the bank statement of Mr. Gourav Jain / his firm:

Figure No. 2

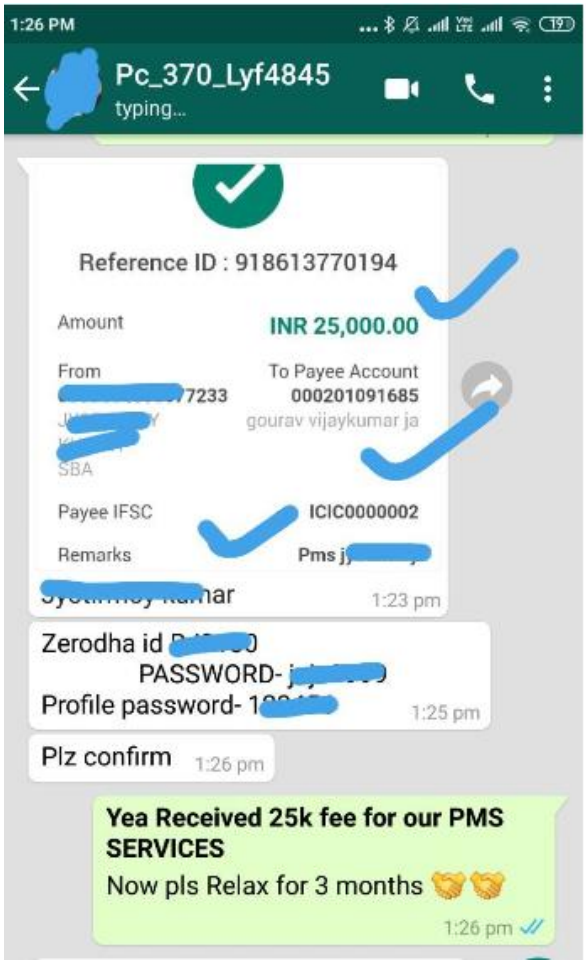
Bank Account - GJ Advisory Services, 5020XXXXXX8449 - HDFC Bank Ltd.



20/07/19	IMPS-920111376070-32155131-HDFC-XXXXXXXX 8943-	920111376070	20/07/19	25,000.00

Figure No. 3

Bank Account – Mr. Gourav Jain, 0002XXXX1685 - ICICI Bank Ltd.



05-07-2019	MMT/IMPS/918613770194/Pms jyotirmoy/JYOTIRMOY /IDB	25000.00

19. Thus, from the above discussion, since the chats are themseleves supported by record of bank transaction, I do not find any valid reason to doubt the veracity of the chat excerpt.

20. Mr. Gourav Jain has alleged that the chats have been tampered with as 21 messages have been deleted from the conversation that the Noticee was having with one of the complainants. The allegation of the Noticee is without any merit as

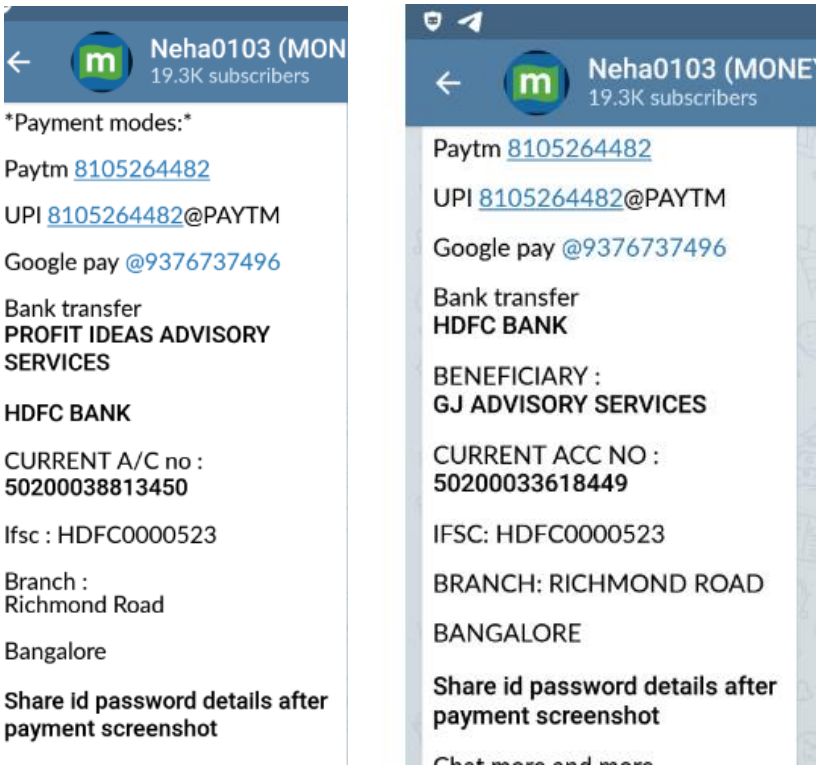
deletion of few messages from a conversation is not equivalent to tampering of the conversation. From the general flow of the chat, one can easily decipher the context of the conversation. Further, there are numerous instances of chat excerpts with similar language and communication. It is difficult to accept Noticee's suggestion that some of the chats have been tampered with, when there are numerous instances of similar chats corroborating the allegation made against the Noticees.

21. In light of the above discussions, I find that the contentions of the Noticees with respect to the admissibility of screenshots as evidence, is without any merit.

22. Without prejudice to the above, I note that even if for a moment, it is accepted that the chats are not admissible, there are narrations in the bank statements of the Noticees (as discussed in subsequent paragraphs) which shows that the Noticees were carrying out the activities related to PMS.

23. With respect to the Telegram channel, NEHA0103, it is noted from the chat excerpts (reproduced below, Figure No. 4) that they show the id, Neha0103 and that it has around 19,300 subscribers. Further, from the communication in the said chats show that the participant is sharing the bank account details and is requesting to share id and password details post making the payment, which is similar to the *modus operandi* of the Noticees (discussed in subsequent paragraphs). Moreover, the name of "GJ Advisory" and "Profit Ideas" names can be clearly seen in the said chats which are the proprietorship firm of Mr. Gourav Jain and Ms. Poonam Jain. Thus, the submission of the Noticees that they are not connceted with the telegram channel Neha0103, is untenable.

Figure No. 4



24. It is noted from Noticees reply dated July 31, 2023 that they have admitted that they were operating the Telegram channels, “GJ Advisory” and “Profit Ideas”. I have noted in the preceding paragraph that even the Telegram channel NEHA0103 was under the control of the Noticees.

25. In view of the aforesaid discussion, I note that the two proprietoriship firms and the Telegram channels as named above, were jointly run / operated under the leadership of Mr. Gourav Jain and Ms. Poonam Jain who are husband and wife and have done courses related to the securities market. Further, the objective of the fims is providing advisory services in the securities market. In other words, on the basis of preponderance of probability, in the given facts and circumstances of the matter, it can be held that both the firms were working in conjunction / in concert with each other.

Communication through Social Media and Bank Statement Narrations

26. It has been alleged against the Noticees that they had carried out activities related to PMS. In this regard, I note that in order to substantiate the allegation, reliance has been placed upon chat extracts between the Noticees and their clients and the narrations in the bank statements of the Noticees and / or the firms. With respect to the chat extracts, I note from the material available on record that there are several chat extracts between the Noticees and their clients. The illustrative chats are reproduced below:

Figure No. 5

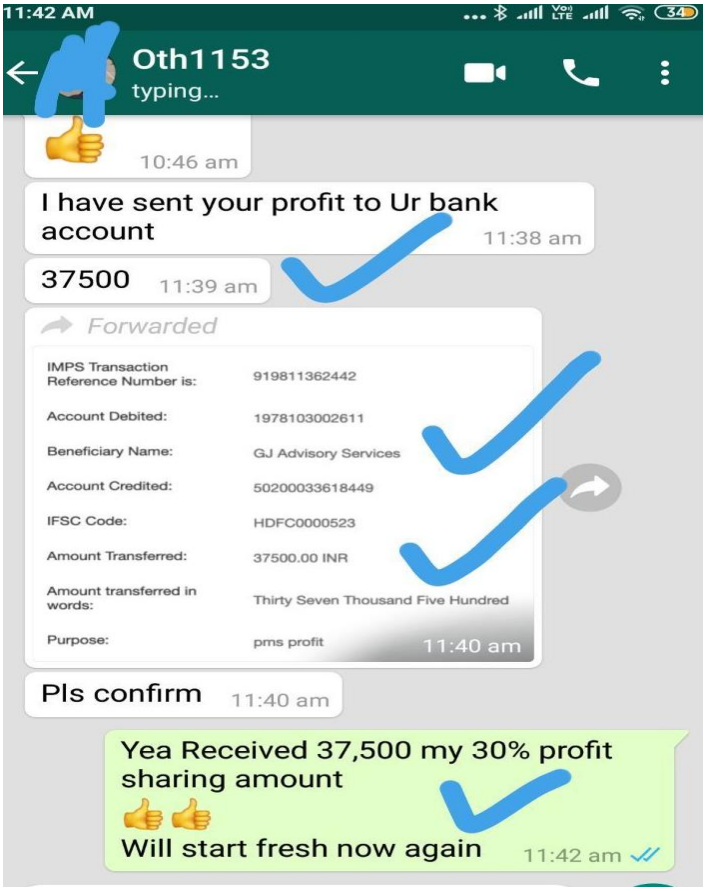
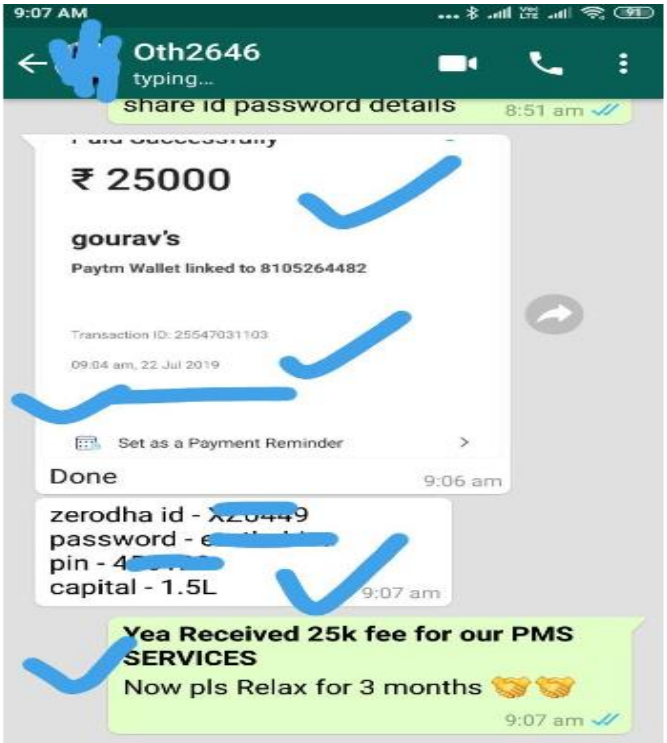


Figure No. 6



27. On a perusal of the aforesaid chat extracts reveal that almost all of the chats have the following common facts:

27.1. Transfer of a certain fee towards PMS service by the client to Mr. Gourav Jain.

27.2. The aforesaid fee transfer was followed by sharing of user id and password of the trading account of the client.

27.3. Subsequently, Mr. Gourav Jain is asking his clients to wait for 3 months.

27.4. Few chats also reveal the profit sharing mechanism entered between Mr. Gourav Jain and the client which was generally in the ratio of 30:70.

28. Further, on an examination of HDFC bank account (5020XXXXXX8449) statement of GJ Advisory Services, ICICI bank account (0002XXXX1685) statement of Mr.

Gourav Jain and HDFC bank account (5020XXXXXX3450) statement of Profit Ideas Advisory Services that there are credit enteries with narration as "PMS SERVICES". An illustrative table is reproduced below:

Table No. 1

Date	Particulars	Credt (INR)
HDFC bank account (5020XXXXXX8449) – GJ Advisory		
10/2/2019	06871000013710-TPT- PMS	21,000
11/02/2019	06871000013710-TPT- PMS	4,000
17/03/2019	01361000081687 – TPT- PMS - SERVICE	20,000
24/03/2019	IMPS-908310533756-BHALACHANDRAM-HDFC-XXXXXXXXXXX3324-FOR PMS	25,000
ICICI bank account (0002XXXX1685) – Gourav Jain		
08/04/2019	MMT/IMPS/909708872259/pms/BALUSVSTAF/BANK OF BARODA	25,000
08/04/2019	UPI/909713516480/PMS Service Cga / hvravikumar@oks/S	25,000
10/04/2019	MMT/IMPS/910018119137/PMS service Gau/MAYUR TULS/H	25,000
16/4/2019	BIL/INFT/001687547368/PMS Service/	25,000
HDFC bank account (5020XXXXXX3450) – Profit Ideas		
23/7/2019	13331140011599 -TPT-TRADING PMS	25,000
13/8/2019	IMPS-922509195962-ABRAHAM MATHEW-HDFC-XXXXXXXXXXXX9613-PMS SERVICES	20,000
25/8/2019	UPI-WUNDRI GUNDRA JAYARA-JAYARAJUG@OKHDFCBANK-HDFC0000077-923710425657-PMS SERVICE	17,000
27/8/2019	MPS-923921886718-GOPU KRISHNAMOORTHY-HDFC-XXXXXXXX6696-GOPU PMSFEE	25,000

29. Thus, from the above discussion, I note that the facts and circumstances of the present matter satisfies the parameters of a portfolio manager as defined under PMS Regulations, 1993. The chat extracts demonstrate that there was an arrangement between Mr. Gourav Jain and his client that for a certain fee, he would manage the trading account of his client and / or provide trade related advice to his client. For the said purpose the client has to share the particulars of the trading

account with him. Pursuant to the management of portfolio of securities for atleast 3 months (in certain cases), if any profit is accrued, the same would be shared in the ratio of 30:70 between him and his client (the ratio is not constant across the clients).

30. The aforesaid is one of the business models related to PMS activities followed by the Noticees. The examination of the bank statements of the Noticees, reveals another business model whereby profits were shared by the clients with the Noticees under various packages and advisory activities was also carried out by the Noticees. An illustrative table is reproduced below:

Table No. 2

Date	Particulars	Credt (INR)
HDFC bank account (5020XXXXXX8449) – GJ Advisory		
28/06/2019	05421140034092-TPT-STOCKS ADVISORY	25,000
16/10/2019	18761130000756-TPT-30 PERCENTAGE 000278282094	4,500
06/11/02019	04471000012886-TPT-SHARE ADVISORY	2,100
09/01/2020	50100006191031 -TPT-PMS PROFIT SHARING 000101632880	7,410
11/01/2020	50100006191031 -TPT-2ND PMS PROFIT 000126001028	3,840
ICICI bank account (0002XXXX1685) – Gourav Jain		
10/10/2019	UPI/928311207905/Option profit s/sunilgparakkal@/D	4,200
04/11/2019	UPI/930818135525/25 profit shari/8971585716@ybl/Ax	2,475
28/11/2019	UPI/933213176891/1stCall Profit/sudhakar.bits89/A	6,850
01/06/2020	MMT/IMPS/015219119744/Trading advicer/V SRIMATHI/I	5,000
24/06/2020	UPI/017609536369/20percentages/abhinavsaxena18/K	2,260
23/07/2020	UPI/020508807652/Profit for SBI/maliksumit589@o/HD	3,180
11/08/2020	UPI/022408872110/Advisor ref pra/vasudev.klk15@o/A	6,500
HDFC bank account (5020XXXXXX3450) – Profit Ideas		

Date	Particulars	Credt (INR)
05/06/2019	UPI-MOHAN KRISHNA COWKU-MOHANAS70@ OKSBI-SBIN0004361-915618369440-OPTIONS ADVISORY	4,000
09/08/2019	UPI-JAGDISH CHAUDHARY-JAGDISH.PRECISE@ OKICICI-ICIC0000844-922107379059-STOCK ADVISE	2,000
27/10/19	50100230698690-TPT-PROFIT SHARING PACKAGE	22,500
08/11/19	03161000010886-TPT-PROFIT SHARING	4,230
08/11/19	00201000153221-TPT-PROFITSHARE30PCT	5,460

31. It is noted from the aforesaid table that the clients have been on a periodic basis sharing profit with the Noticees under various descriptions such as “Option Profits” “Call Profit”, “20 percentages”, “Profit for SBI”, etc. Further, the Noticees have also been providing stock advisory services. Based on the narrations in the bank statement, following can be inferred:

31.1. There is a prior arrangement of the Noticees with their clients wherein the Noticees would render advice or operate the trading account of the clients. The said arrangement is inferred from the sharing of the profits between the Noticees and the clients and from the bank statement narrations such as “Stock Advisory”, “Share Advisory”, “Options Advisory”, etc. Further, sharing of profits between the clients and the Noticees shows that the Noticees excercised discretion with respect to the investments or management of portfolio of securities or the funds of the client, thereby making them discretionary portfolio managers or non-discretionary portfolio managers.

31.2. Various packages apart from “PMS Service” was provided by the Noticees like “Option Profits”, “Call Profit”, “20 percentages”, etc. It is noted that there is a commonality in the various packages that was being offered by the Noticees which was of sharing of profits between the Noticees and the clients.

32. It has already been noted in the preceding paragraphs that the Noticees were managing the portfolio of certain clients under the service / package, “PMS Service”. It is also noted from the above that the Noticees were advising their clients under multiple packages and in turn the clients were sharing profits with the Noticees and paying fees as well. Thus, under both the business models, the Noticees were either undertaking on behalf of their clients, the management or administration of their portfolio of securities or were advising their clients with respect to their portfolio of securities. The contract or arrangement between the Noticees and the clients was reflecting in their profit sharing scheme. Therefore, it can be held that the primary nature of the business undertaking by the Noticees is that of a discretionary portfolio manager.

33. In view of the aforesaid discussion, it can be concluded based on the factual analysis of the activities of the Noticees as noted from the chat excerpts and the bank statements of the Noticees that “GJ Advisory” and “Profit Ideas” were offering portfolio management services to their clients.

34. It has been submitted by the Noticees that the words ‘PMS' are misconstrued as ‘Portfolio Management Services'. ‘PMS' as per Noticees communications with their clients only meant ‘Private Messaging Services' related to stock market alerts. I note from the available records that the Noticees have neither submitted any communication with their clients wherein it has been stated that the Noticees are providing ‘Private Messaging Services' nor any other document which would evidence that PMS stands for ‘Private Messaging Services'. On the other hand, as noted in the preceding paragraphs, the Noticees were discussing the intricacies of the portfolio management services with their clients such as the capital requirement, the duration of investment, profit sharing mechanism, etc. The following chat excerpts shows that Mr. Gourav Jain has even stated while enrolling the complainant that he would be “**personally handling his account**”. Therefore, the submission of the Noticees, is an afterthought.

Figure No. 7

of 30k
[21/03/2019, 1:12:22 PM] GJ: How much is ur capital available
[21/03/2019, 1:12:26 PM] GJ: Where is ur trading account
[21/03/2019, 1:13:40 PM] JD: I can arrange 3-5 lakhs and if goes well I can put upto 10L
[21/03/2019, 1:14:29 PM] JD: I have in upstox
[21/03/2019, 1:14:59 PM] GJ: Great
[21/03/2019, 1:15:08 PM] GJ: Nice
[21/03/2019, 1:15:14 PM] GJ: Profit sharing scheme
70:30

Min amt : 5lacs

30% in 3 months

Ex: *on 10 lacs*
3lacs total profit in 3 months
Then
2.10L urs
90k mine
[21/03/2019, 1:15:20 PM] GJ: Its very safe investment

Coz i personally would be handling your account &

99% Will be doing mainly equity cash positional trading,,
[21/03/2019, 1:15:25 PM] GJ: 25k advance fee

Every 3 months profit settlement

30% in 3 months

& my 25k advance fees will be adjusted in my 30% profit sharing amount.
[21/03/2019, 1:17:40 PM] JD: I have already paid tips fee as 15k and can be converted to pms fee
[21/03/2019, 1:18:10 PM] JD: Otherthaan upstox whats the other platform you supported
[21/03/2019, 1:19:52 PM] GJ: Angel Broking
[21/03/2019, 1:20:22 PM] GJ: No that fees can't be converted

Since this is completely different product
[21/03/2019, 1:21:53 PM] JD: If I open the account in angel broking is

35. It is noted that irrespective of the nomeclature used by the Noticees to market their business activity, the nature of the business activity carried out by the Noticees satisfies the parameters of a portfolio manager as defined under regulation 2 (cb) of PMS Regulations, 1993.

36. Noticees have submitted that they do not provide any BUY/SELL, STOP LOSS, TARGET or HOLD recommendations to any of their clients and also have issued disclaimers to their clients. The Noticees have not been able to substantiate with

documentary evidence as to precisely what is their business model. They have merely stated without any documentary or corroborative evidence that they used to collate information that was publicly available and present it to their clients. However, in the preceding paragraphs, I have noted that the Noticees were selling multiple packages to several of their clients and in lieu were getting a share in the profit or fees for the services offered by them. The said packages were related to PMS activities and advisory services. Moreover, the following chat excerpts (Figure Nos. 8 and 9) contradicts the submission of the Noticees. The content of one chat shows that a certain client is seeking advice on whether to sell a particular scrip or not and the Noticees are replying in negative and the content of the other chat shows that the Noticees are asking the client to make the payment so as to receive a "bumper call".

Figure No. 8

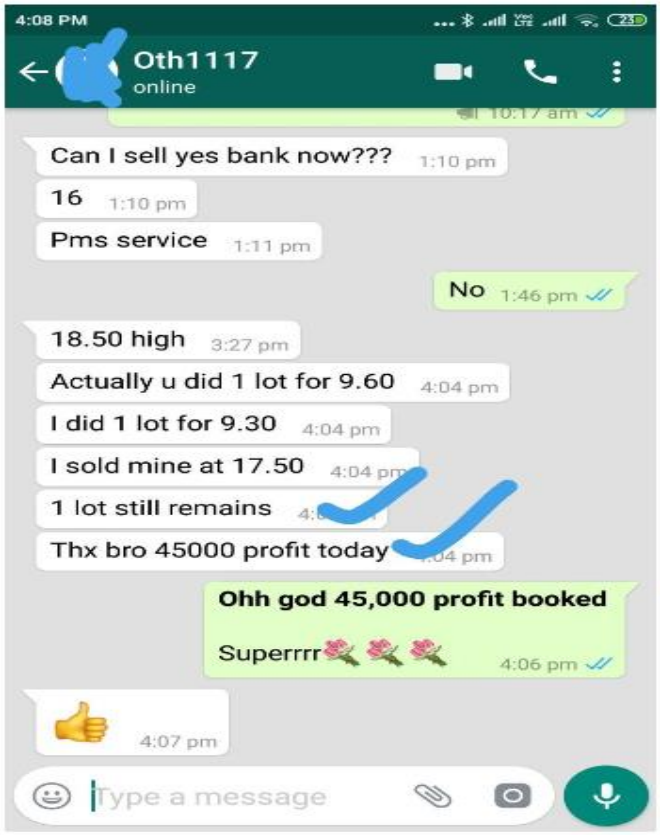
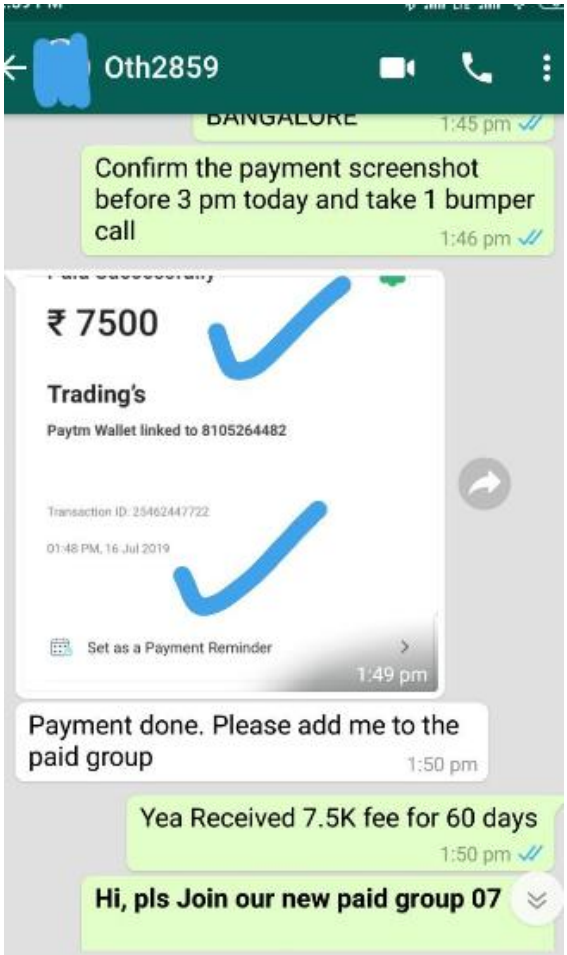


Figure No. 9



Therefore, the aforesaid submission of the Noticees is devoid of any merits. Here, I would also like to note that it is very convenient for the Noticees to now say that they do not have any records of their business activity as it was destroyed in a fire. Firstly, I note that the apparent damage to the records has been raised for the first time post hearing when the Noticees were asked to demonstrate their business activities by producing documentary evidence. In their earlier reply there is no mention of the material fact that the records of their business activity have been destroyed by a fire which broke out in their house. Secondly, the Noticees have not submitted any documentary evidence viz., fire incident report, insurance claim,

etc. to substantiate their submission. Hence, I find the submission of the Noticees as an afterthought.

37. Noticees have submitted that they have issued disclaimer to each and every client stating that *"Investment in Stock Market is always subject to market risk &,Your investment can become 0 also, NO Guaranteed Returns, NO Trading Tips, NO Buy & Sell Advice, NO Tgt & SL Views / Alerts completely Personal & ONLY given for Educational Purposes, Act @ UR OWN RISK, Consult your Advisor before Making Decision"*. In this regard, I note that the submission of the Noticees is not supported by any documentary evidence or any correspondence that the Noticees had with their clients making the clients aware of the inherent risk involved in dealing in securities. Secondly, the allegation against the Noticees is that they were carrying out unregistered PMS activities and for the said action of the Noticees, disclaimers such as "*Investment in Stock Market is always subject to market risk &,Your investment can become 0 also, NO Guaranteed Returns, Consult your Advisor before Making Decision"* are not relevant as giving the aforesaid disclaimers does not rebut the allegation of unregistered PMS activities of the Noticees. Lastly, even if it is accepted for a moment that Noticees had made adequate disclosures, the same does not change the nature of business activity carried out by the Noticees i.e. of carrying out unregistered PMS activities as noted in preceding paragraphs.

38. It has been alleged against the Noticees that they were asking their client's trading account id and password as they were carrying out PMS activities. To that the Noticees have contended that they used to ask their clients about their trading account's id and password to verify as to whether the one-click BOT software was working for the clients. The said one-click BOT software facilitated clients to place order with just one click. Noticees have made a tabular representation showing that payment for the said software was made in the month of June and August 2020. I note that the contention of the Noticees raises the following red flags:

38.1. The Noticees have not submitted any documentary evidence, which would show that such a software exists or is owned by the Noticees.

38.2. Noticees have not submitted any correspondence with the software vendor regarding the usage of the said software and the terms and conditions of its purchase. Mere reproduction of payment, if any (veracity of payment cannot be ascertained based on the submission of the Noticees) does not throw any light on the application of the said software.

38.3. The payments made are of the mid-year 2020 whereas the Noticees are carrying out their activities since May 2017 and there are chat excerpts available on record that would demonstrate that the Noticees have sought client's trading account id and password much prior to the mid-year 2020.

38.4. It is noted that the Noticees have not submitted any communication with their client where they have informed the client, the reason for which their trading account details were sought. Further, the chat excerpts as available on record does not show that the trading account details were sought for installation of a software.

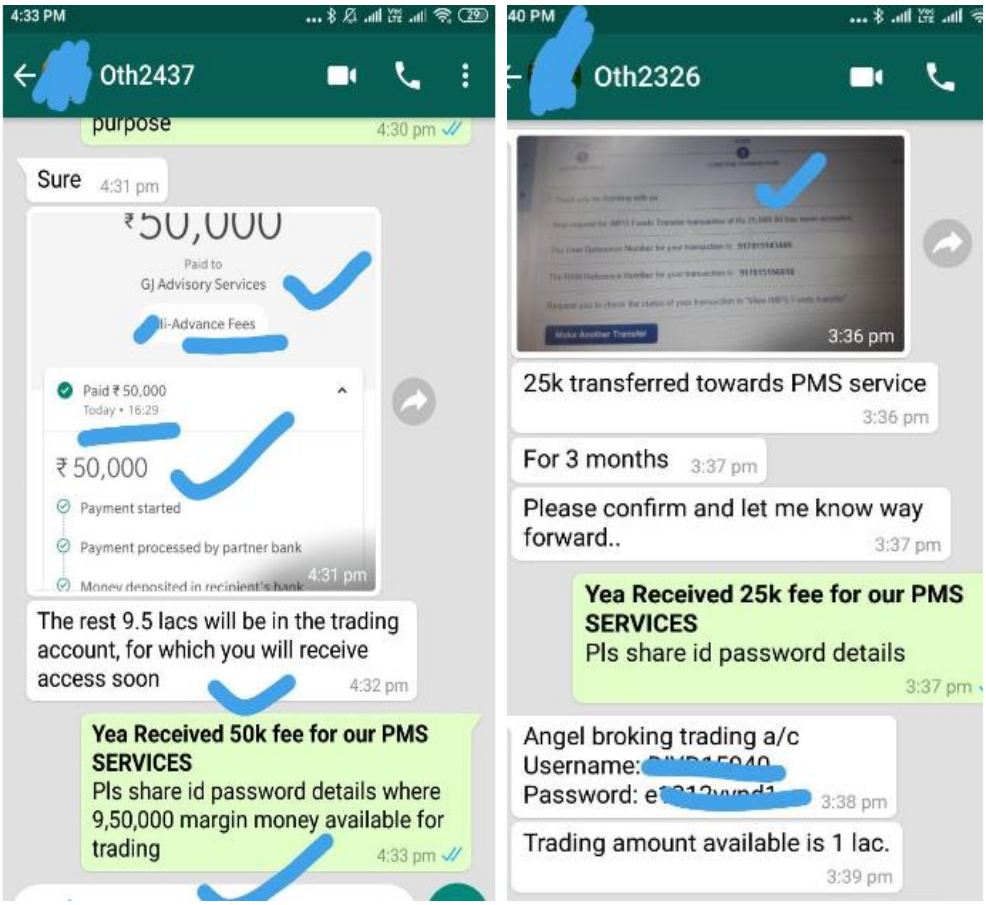
38.5. It does not seem feasible that the clients, who can do online trading, cannot install a simple software on their own.

38.6. Noticees have not explained where exactly the software would be installed which would facilitate the clients in placing the orders. In other words, the Noticees have not demonstrated as to how the said software would interact with a particular stock broker's interface for trading.

In view of the above glaring shortcomings in the submission of the Noticees, I find that the submission of the Noticees is without any merit.

39. It is also noted from the records that not only the Noticees used to ask their clients about their trading account id and password but also the money available for trading. Few illustrative chats are as follows:

Figure No. 10



40. If the purpose of inquiring about the trading account id and password was for installation of one-click BOT software, there was no need to inquire about the funds available for trading. Thus, the actions of the Noticees belies their submission.

41. Noticees have submitted that they have never entered into any agreement, arrangement or contract, whether verbal or written, with their clients to manage or administer any portfolio of securities on their behalf. The actions of the Noticees as seen from the chat excerpts show that there did exist an arrangement between

the Noticees and their clients wherein the clients would pay the fees and contribute the capital for trading and the Noticees would trade on their behalf as they had access to the client's trading account id and password. Subsequently, if any profits were accrued at the end of 3 months, it would be shared between the two in a certain ratio. The aforesaid is highly suggestive of an act of a discretionary portfolio manager. Further, the bank statement of the Noticees show that their clients used to share profits with the Noticees. The same demonstrates that the Noticees had an arrangement with their clients that post their advice towards their portfolio of securities, the clients would share the profits accrued to them by their dealings in the securities. Thus, the actions of the Noticees belies their submission.

42. It has been submitted by the Noticees that under Diamond Package they used to provide real time alerts to the clients and under Retail Package basic training materials about markets, stocks etc. were provided to the clients. The submission of the Noticees is not corroborated either with any documentary evidence nor any correspondence with the clients regarding the services offered under the above named packages. In any case, as noted earlier, the primary activity of the Noticees was portfolio management services. Thus, any activity of the Noticees which is incidental to their primary activity of portfolio management services such as providing real time alerts to the clients which may influence the investment activity of the clients or providing clients with training materials about markets, stocks etc. for the benefits of the clients, would be covered within the ambit of activities undertaken by a portfolio manager. Thus, the various packages offered by the Noticees, by whatever named they were called, so long they are related to the dealing of the clients in the securities market, would be considered as incidental to the primary activity of the Noticees which was of portfolio management services.

43. In view of the aforesaid discussions, I am of the view that the activities of the Noticees satisfies all the parameters essential to qualify them as Portfolio Managers in terms of regulation 2 (cb) of PMS Regulations, 1993.

Issue No. 2: Whether, the Noticees have violated the provisions of SEBI Act and PMS Regulations, 1993?

44. As per regulation 3 of PMS Regulations, 1993 and Section 12(1) of SEBI Act, any person acting as portfolio manager and carrying out portfolio management services has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI regulations i.e. the registration of portfolio manager is mandatory.

45. It has been noted in preceding paragraphs that "GJ Advisory" and "Profit Ideas" had undertaken the management of funds as well as securities since May 2017 on behalf of its clients and were collecting fees / funds from the clients in the bank accounts of the firms maintained with HDFC Bank Ltd. and in the personal bank account (Mr. Gourav Jain's account with ICICI Bank Ltd having account no. 0002XXXX1685) by carrying out the activities of a portfolio manager. However, no material is available on record to indicate that "GJ Advisory" and "Profit Ideas" have a certificate of registration to act as portfolio managers. I also note that the proprietors of "GJ Advisory" and "Profit Ideas" viz., Mr. Gourav Jain and Ms. Poonam Jain, respectively are also not registered with SEBI, in their individual capacity as a portfolio manager or in any other capacity. Hence, I find that the activities, as discussed above, were carried out by of the Noticees without holding the mandatory certificate of registration as a portfolio manager. Since the firms are proprietorship firms, their proprietor namely, Mr. Gourav Jain and Ms. Poonam Jain are responsible for the acts of the firms. Therefore, the Noticees are in violation of Section 12(1) of SEBI Act and regulation 3 of the PMS Regulations, 1993. I note that the PMS Regulations, 1993 have been repealed by regulation 42 (1) of the PMS Regulations, 2020. However, as per regulation 42 (2) (a) of the PMS Regulations, 2020, violations of PMS Regulations, 1993 can be pursued under the provisions of PMS Regulations, 2020.

46. I also note that by carrying out unregistered portfolio management services, “GJ Advisory” and “Profit Ideas” have collected an amount of INR 8,89,23,049/- as fees towards management of funds and securities of clients during the period May 2017 to December 2020. I have already noted in preceding paragraphs that both the firms were run together as one unit. Therefore, the fees collected by the firms for carrying out unregistered PMS activities has to be seen together without making any segregation based on the credits in the respective bank accounts of the firms. Hence, for the fees collecetd by the firms, their proprietor namely, Mr. Gourav Jain and Ms. Poonam Jain are jointly and severally, liable.

47. The details of the fees collected in the bank accounts mainatained in the name of the firm and in the personal bank account of Mr. Gourav Jain is as follows:

Table No. 3

Account Name/ Authorised Signatory	**Account Number & Bank**	**Transaction Period**	**No. of credit txns.**	**Total Credits (INR)**
GJ Advisory Services /Gourav Jain, Proprietor	5020XXXXXX8449 - HDFC Bank	14/09/2018 to 20/12/2020	1,949	2,76,82,842
Gourav Vijaykumar Jain	0002XXXX1685 - ICICI Bank	29/05/2017 to 24/12/2020*	4,165	5,61,71,943
Profit Ideas Advisory Services/ Poonam Jain, Proprietor	5020XXXXXX3450 - HDFC Bank	23/04/2019 to 01/02/2020 (A/c closed on 01/02/2020)	572	50,68,264
		Total	**6,686**	**8,89,23,049**

**The account is active since 15-12-2007, however the credits to the bank account with narration "GJ Stocks", 'Trade", "Stock" etc., have been observed only since 29-05-2017 and hence period is taken from 29-05-2017.*

48. Mr. Gourav Jain has submitted that out of INR 8,20,00,953/- deposited in his ICICI bank account and in the firm’s HDFC bank account (GJ Advisory), INR

1,73,73,366/- is not fees but is the amount received from trading settlement or from family. In this regard, I note the following:

48.1. Noticee has not stated precisely how much is the amount recieved from his family and how much is the amount recieved from trading settlement.

48.2. The amount apparently recieved from trading settlement is not supported by corresponding demat statement.

48.3. The amount,if any recieved from his family member is not supported by the bank statement of the said family member showing a corresponding debit in the latter's bank account.

48.4. The seggregation in the funds as recieved by the Noticee is not independently verified by a Chartered Accountant.

In view of the above inadequacies in the submission of the Noticee, I am not inclined to agree with the submission made by the Noticee.

49. At this juncture, it will be relevant to quote the Order of the Hon'ble Securities Appellate Tribunal in the matter of *Vusa Ravi* vs. *SEBI* decided on July 27, 2023, wherein it was argued by the Appellant that the direction to refund is patently erroneous in as much as the entire amount shown in the bank accounts was not towards advisory services but was for other services. Hon'ble Tribunal while upholding the order held as follows:

"…However, with regard to the direction for refund, considering the facts and circumstances that have been brought above, we direct the appellant to move an appropriate representation within three weeks from today giving details of the credit entries of the three bank accounts and indicate with precision as to which amount relates to advisory services and which amount does not relate to advisory services. The authority will consider each and every entry and thereafter crystalize the amount to be refunded within two months thereafter."

50. In light of the aforesaid Order of the Hon'ble Tribunal, the bank statements of the Noticees were independently analysed. From the narrations made therein, it was noted that certain credit entries were unrelated to the buisness activity of the Noticees. For e.g., there are credit enteries in the HDFC bank account of GJ Advisory (5020XXXXXX8449) with narrations such as "Tution fees", "Friends", "Salary" etc. Similar narrations are also there in the ICICI bank account of Mr. Gourav Jain (0002XXXX1685) such as "Family Maint", "Personal", "Gift" etc. Even the HDFC bank account of Profit Ideas (5020XXXXXX3450) has credit narrations such as "Utility bill payment", "Family Maintenance", etc. A summary of such unrelated narrations to the business activity of the Noticees is reproduced below:

Table No. 4

Account Name/ Authorised Signatory	Account Number & Bank	Transaction Period	No. of credit txns.	Total Credits (INR)	No. of unrelated credit transactions	Unrelated credits (INR)
GJ Advisory Services /Gourav Jain, Proprietor	5020XXXXXX8449 - HDFC Bank	14/09/2018 to 20/12/2020	1,949	2,76,82,842	34	22,22,170
Gourav Vijaykumar Jain	0002XXXX1685 - ICICI Bank	29/05/2017 to 24/12/2020	4,165	5,61,71,943	99	1,34,30,037
Profit Ideas Advisory Services/ Poonam Jain, Proprietor	5020XXXXXX3450 - HDFC Bank	23/04/2019 to 01/02/2020 (A/c closed on 01/02/2020)	572	50,68,264	4	1,59,885
		Total	**6,686**	**8,89,23,049**	**137**	**1,58,12,092**

In light of the aforesaid discussion, I am inclined to give the benefit of doubt to the Noticees to the extent of INR 1,58,12,092/- as the said amount appears to be unrelated to the unregistered PMS activities carried out by the Noticees.

Summary

51. At this juncture, I would like to summarise my findings in the instant matter:

51.1. The preponderance of probability suggests that the proprietorship concerns of Mr. Gourav Jain and Ms. Poonam Jain operated in concert / conjunction with each other.

51.2. Based on the nature of the business of the proprietorship firms as declared in their KYC, chat excerpts and the narrations in the bank statements of the Noticees / firms, it can be been inferred that the Noticees under multiple packages were either undertaking to manage the client's portfolio of securities / funds or were advising the clients with respect to their portfolio of securities and the clients apart from paying the fees for the said packages, were also sharing profits with the Noticees, in certain cases. These activities of the Noticees lead to the conclusion, on a preponderance of probability, that the Noticees were carrying out PMS activities without obtaining registration from SEBI.

51.3. During the period May 2017 to December 2020 for the PMS activities and advisory services, Noticees have collected INR 7,31,10,957/- from their clients.

Issue No. 3: What directions, if any has to be issued against the Noticees?

Order

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

52.1. The Noticees shall within a period of three months from the date of coming into force of this order, jointly and severally, refund INR 7,31,10,957/- received from clients and/or investors, as fees or consideration or in any other form, in respect of their unregistered portfolio management activities;

52.2. 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 Order;

52.3. The repayments to the complainants and/or 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 trail to identify the beneficiaries of repayments;

52.4. The Noticees are prevented 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 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 portfolio management services from the Noticees, as directed in this Order, from the bank accounts of the Noticees;

52.5. After completing the aforesaid repayments, the Noticees shall file a report of such completion with SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, SEBI Bhavan II, Plot No. C7 G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051within a period of 15 days, after completion of three months from the coming into force of this order, duly certified by an independent Chartered Accountant that all repayments have been made to the clients / investors of the Noticees by taking into account directions given at paragraph 52.3 and the direction at paragraph 52.4 above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors;

52.6. The remaining balance amount shall be deposited with SEBI which shall be kept in an interest bearing escrow account for a period of 1 (one) year for

distribution to clients/investors who were availing the portfolio manager services from the Noticees. Thereafter, the remaining amount, if any, shall be deposited in the Investors Protection and Education Fund, maintained by SEBI.

52.7. 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 2 (two) years from the date of completion of refunds to complainants/ investors as directed in paragraph 52.1 above;

52.8. The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 52.7 above, either directly or indirectly, portfolio management services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

52.9. Upon submission of report on completion of refund to clients/investors to SEBI and deposit of the balance amount, if any, with SEBI as directed at paragraph 52.6, the direction at paragraph 52.4 above shall cease to operate.

53. This Order is without prejudice to any other action that SEBI may initiate.

54. The direction for refund, as given in paragraph 52.1 above, shall not act as a bar on the clients /investors to pursue any other legal remedy 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.

55. This Order shall come into force with immediate effect.

56. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant Banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

-Sd-

Date: August 31, 2023 **ANANTH NARAYAN G.**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA