BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/AN/AK/2024-25/30918

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

In respect of:
Ketan Bora Proprietor of the Insane Traders
(PAN: BENPB0608D / SEBI Registration Number: INA000007793)

In the matter of Ketan Bora Proprietor of the Insane Traders

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted a surprise joint inspection, with BSE Administration and Supervision Limited ('BASL'), of Ketan Bora Proprietor of the Insane Traders (hereinafter also referred to as **'Noticee'/ 'entity'/ 'IA'/ 'Ketan'/ 'IA- Ketan Bora')** on September 14, 2023 for the Inspection period April 01, 2022 to August 31, 2023. The focus of the inspection was to look into the compliance with respect to concerned regulations, investor service / complaints, KYC compliance, on-boarding of clients, fees /charges, conditions of grant of registration, risk evaluation and dealing with clients and to inter alia verify if the Noticee had complied with applicable Regulations issued by SEBI from time to time.

2. The findings and observations of the inspection were communicated to the Noticee vide letter dated October 27, 0223 and Noticee vide its letter dated November 07, 2023 provided its comments on the findings and observations of SEBI.

3. Pursuant to the said inspection, based on the analysis of replies received and examination in the matter by SEBI, briefly stated, it was interalia observed by SEBI

that Noticee had allegedly violated provisions of Regulation 7(2), 8, 13(e) 15 (8), 16, 17, 18 and 19 (1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter also referred as “IA Regulations”). Accordingly, SEBI initiated adjudication proceedings against the Noticee under Section 15-I of SEBI Act, 1992 (hereinafter also referred as “SEBI Act”) for the alleged violations of the relevant provisions, as stated.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Whereas the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred upon him under Section 19 of the SEBI Act, 1992 read with section 15-I (1) of SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by AO) Rules, 1995 (hereinafter also referred to as “SEBI Adjudication Rules” / “Adjudication Rules” / “AO Rules”), the Competent Authority appointed the undersigned as Adjudicating Officer (“AO”) to inquire into and adjudge under Section 15EB of SEBI Act, 1992 for the alleged violations by the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated March 19, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice bearing no. SEBI/HO/EAD/EAD5/P/OW/2024/16662/1 dated May 13, 2024 (“SCN”), was served upon the Noticee under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15EB of the SEBI Act, for the violations alleged to have been committed by the Noticee.

6. The allegations in respect of the Noticees inter alia brought out in the SCN are as under:

"

…..

3. SEBI carried out a surprise joint inspection with BSE Administration and Supervision Limited ('BASL') of the Noticee, which is registered with SEBI as a Investment Advisor ('IA') vide SEBI registration number INA000007793 since May 30, 2017 to July 07, 2022 under the name Ketan Bora Proprietor of Excel Stock Research and it has been registered with SEBI as Ketan Bora Proprietor of the Insane Traders since July 08, 2022.The inspection of the Noticee was undertaken on September 14, 2023. The inspection was conducted at the entity's registered office located at Flat No.K401,Park Express, Balewadi High Street, Near Graduer, Balewadi Pune Municipal Corporation ,Pune 411045. The period of inspection was April 01, 2022 to August 31, 2023 ('Inspection period'/ 'IP'). An Inspection report ('IR') was submitted in this regard (Annexure B). The findings of inspection were communicated to the Broker and the Broker submitted its reply to the observations vide letter dated November 07, 2023 (Annexure C).

4. Findings and Observations and Alleged Violations thereto in respect of the Noticee are as under:

Based on the inspection in the matter, briefly summarized findings/allegations are *interalia* given below:

4.1. NISM Certification:
As per onsite inspection conducted at registered address of IA- Ketan Bora, it has been observed that IA- Ketan Bora has not renewed his NISM X-A & NISM X-B certification as prescribed in IA Regulation.

4.1.1. As per onsite inspection conducted at registered address of IA- Ketan Bora, it has been observed that IA- Ketan Bora has not renewed his NISM X-A & NISM X-B certification as prescribed in IA Regulation. Copies of NISM X-A and NISM X-B certificates. (Annexure D)

4.1.2. The Noticee in its reply to the findings of Inspection report submitted that*, he has failed to renew his certifications as per IA Regulation 7(2) as he was unaware of the same and there was no communication from SEBI or BASL in this regards, and it was genuine mistake due to lack of knowledge of regulation.*

4.1.3. BASL in this regard has given its remarks that, as per Regulation 7(2) of IA Regulation 2013, individual IAs or Principal officer of non-individual IA and persons associated with investment advice are required to obtain fresh certification before the expiry of validity of the existing certification. IA – Ketan Bora has not ensured continuity in compliance with the certification requirements as provided in the said IA Regulation, 2013. As regard his partnership application for registration as a RA has been rejected by SEBI, IA – Ketan Bora need to ensure compliance to General obligations and responsibilities of an IA as defined in the IA Regulations.

4.1.4. SEBI in this regard observed that, the submissions from the IA are unacceptable. The comments of BASL are accepted. The NISM Certificates in question have their validity details mentioned on them. Hence, it is untenable for the IA to claim lack of knowledge and genuine mistake in not renewing the NISM Certifications of NISM X-A & NISM X-B.

In view of the above, it is alleged that the Noticee had violated Regulation 7(2) of IA Regulations.

4.2. Maintenance of Books of Accounts, Records etc.

IA-Ketan Bora has failed to maintain and provide the record of clients and copy of agreement executed between him and his clients. Also, all the required and relevant data related to his clients was not available at the time of onsite inspection.

4.2.1. IA-Ketan Bora has failed to maintain and provide the record of clients and copy of agreement executed between him and his clients. Also, all the required and relevant data related to his clients was not available at the time of onsite inspection.He has violated Regulation 16 of SEBI (Investment Advisers) Regulations, 2013 as he failed to provide the documented process flow and the detail questionnaire for risk profiling.

4.2.2. The Noticee in its reply to the findings of Inspection report submitted that, he had maintained the basic details like Name ,City, contact Number and Email Id of all the people who showed interest in his services.

4.2.3. BASL in this regard has given its remarks that, as per regulation 19 IA is required to preserve all required data as mentioned therein either in physical or electronic form for a minimum period of five years. IA – Ketan Bora has not complied to said regulation as he failed to provide with the relevant details and data as called upon at the time of inspection.

4.2.4. SEBI in this regard observed that, the submissions from the IA are not worthy of consideration. The remarks of BASL are admissible. The IA had failed to provide the details sought in the aforesaid point at the time of inspection.

In view of the above, it is alleged that the Noticee had violated Regulation 19 (1) of SEBI IA Regulations.

4.3. Client On-Boarding Process

IA-Ketan Bora has failed to provide details of KRA process at the time of on-site inspection. IA-Ketan Bora has also submitted in his Pre-Inspection Questionnaire that he has not followed the KYC Process while on-boarding clients.

4.3.1. IA-Ketan Bora has failed to provide details of KRA process at the time of on-site inspection. IA-Ketan Bora has also submitted in his Pre-Inspection Questionnaire that he has not followed the KYC Process while on-boarding clients. Statement of Bank Accounts showing the payments received by IA-Ketan Bora from the clients. (Annexure E)

4.3.2. The Noticee in its reply to the findings of Inspection report submitted that, IA was not treating them as his clients, and he was accepting money from people who showed interest in his services as paid trials, hence regulation 19(1)d of IA regulation is not applicable.

4.3.3. BASL in this regard has given its remarks that, As per regulation 19 (1) (d) of IA regulation, IAs are required to maintain records of their clients inter alia their KYC, Risk profiling, risk assessment, suitability, copies of agreement, etc. IA – Ketan Bora has obtained fees from his clients for providing investment advice and as per regulation 19 of said IA Regulation, 2013, IAs are required to enter into agreement with their clients and maintain all records either in physical or electronic form for a minimum period of five years and also conduct yearly audit in respect of compliance with the said regulation.

4.3.4. SEBI in this regard observed that, the submissions from the IA are baseless. The remarks of BASL are accepted. It is improper for IA to claim that people from whom he was receiving payment and providing investment advisory services in exchange were not his clients.

In view of the above, it is alleged that the Noticee had violated Regulation 15(8), Regulation 19 (1) (a) of SEBI IA Regulations.

4.4. Suitability

IA-Ketan Bora has failed to provide the documented process flow to identify risk profile/ risk score of clients to decide on their suitability for financial products.

4.4.1. IA-Ketan Bora has failed to provide the documented process flow to identify risk profile/ risk score of clients to decide on their suitability for financial products. (Annexure E)

4.4.2. The Noticee in its reply to the findings of Inspection report submitted that, IA was not treating his subscribers as clients hence denying the violation of Regulation 16 of SEBI(Investment Advisers) Regulations,2013 in his interpretation.

4.4.3. BASL in this regard has given its remarks that, As per Regulation 15A, IA is entitled to charge fees for providing investment advice from a client and as per Regulation 16 IA need to ensure Risk profiling of its clients. IA – Ketan Bora has collected IA fees from his clients and he has not ensured to comply with Regulation 16 on risk profiling of its clients.

4.4.4. SEBI in this regard observed that, the submissions from the IA are groundless. The remarks of BASL are worthy of consideration. It has been seen that the IA was charging a fees from the said subscribers. It is inappropriate for the IA to claim that persons from whom he was charging fees were not his clients.

In view of the above, it is alleged that the Noticee had violated Regulation 17 of IA Regulations.

4.5. Risk profiling

IA-Ketan Bora has failed to provide the documented process flow and the detail questionnaire for risk profiling of his client.

4.5.1. IA-Ketan Bora has failed to provide the documented process flow and the detail questionnaire for risk profiling of his client. (Annexure E)

4.5.2. The Noticee in its reply to the findings of Inspection report submitted that, IA was not treating his subscribers as clients hence denying the violation of Regulation 17 of SEBI(Investment Advisers) Regulations,2013 in his interpretation.

4.5.3. BASL in this regard has given its remarks that, As per Regulation 15A, IA is entitled to charge fees for providing investment advice from a client and as per Regulation 17 IA need to ensure suitability of its clients. IA – Ketan Bora has collected fees from his clients and he has not ensured to comply with Regulation 17 on suitability of its clients.

4.5.4. SEBI in this regard observed that, The submissions from the IA are baseless. The remarks of BASL are noteworthy. It is unbecoming of the IA to claim that those he was receiving a payment from and whom he was rendering an investment advisory service in return were not his clients.

In view of the above, it is alleged that the Noticee had violated Regulation 16 of IA Regulations.

4.6. Disclosures to Clients

IA- Ketan Bora has failed make disclosures such as about material information about itself including its business, disciplinary history, any actual or potential conflict of interest, etc. as mandated by SEBI IA Regulations.

4.6.1. IA- Ketan Bora has failed make disclosures such as about material information about itself including its business, disciplinary history, any actual or potential conflict of interest, etc. as mandated by SEBI IA Regulations. (Annexure E)

4.6.2. The Noticee in its reply to the findings of Inspection report submitted that, *he has not provided any investment advisory services to his prospective clients so in his interpretation he has not violated Regulation 18 of SEBI (Investment Advisers)Regulation 2013.*

4.6.3. BASL in this regard has given its remarks that, As per Regulation 15A, IA is entitled to charge fees for providing investment advice from a client and as per Regulation 18 IA need to provide all such disclosure information to its clients to take an informed decision in availing its services. IA – Ketan Bora has collected fees from his clients and he has not ensured to comply with Regulation 18 on disclosures to its clients.

4.6.4. SEBI in this regard observed that, the submissions from the IA are groundless. The remarks of BASL are worthy of consideration. It is not fit for the IA to claim that those he was receiving a payment from and whom he was rendering an investment advisory service in return were not his clients.

In view of the above, it is alleged that the Noticee had violated Regulation 18 of IA Regulations.

4.7. Maintenance of Policy

IA- Ketan Bora has not applied for registration as non-individual Investment Advisor upon reaching more than 150 clients.

4.7.1. IA- Ketan Bora has not applied for registration as non-individual Investment Advisor upon reaching more than 150 clients. (Annexure E)

4.7.2. The Noticee in its reply to the findings of Inspection report submitted that, he had not made any clients but only people who showed interest in his services , Clients were to be made post receipt of the non-individual licence. IA made application for non-individual first in the month of August 2022 before making a single client for the Investment advisory services ,so in his interpretation he has not violated regulation of SEBI(Investment Advisers) Regulations.

4.7.3. BASL in this regard has given its remarks that, IA Ketan Bora has collected fees from 3300 clients during the inspection period and as he has exceeded the limit of 150 clients, he was required to comply with the said SEBI circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23,2020 for registration as a non-individual IA before reaching the said limit of 150 clients. IA Ketan Bora has not ensured that the numbers of clients does not exceed 150 in total and comply to the said SEBI circular.

4.7.4. SEBI in this regard observed that, The submissions from the IA do not stand any ground. The remarks of BASL are to be sustained. It is incorrect for the IA to claim that people who showed interest in his services and to whom he has issued post payment receipts in exchange of investment advisory services provided by him were not his clients.

In view of the above, it is alleged that the Noticee had violated Regulation 13 (E) of IA Regulations.

4.8. Capital Adequacy / Net worth

IA- Ketan Bora has not complied with the Net worth criteria wherein an Individual Investment Advisers, need to have a net tangible asset of at least Rs. 5 lakhs. It is observed that as per the net worth certificate (issued by - Sunny Balani & Co Chartered Accountants) forwarded by him, IA- Ketan Bora is having a net worth of Rs. Rs.3,85,100 /- (Rs. Three Lakhs Eighty Five Thousand One Hundred only) as on 17th October 2023.

4.8.1. IA- Ketan Bora Proprietor of Insane Traders has violated Provision of Regulation 8 of SEBI (IA) Regulation 2013 related to Net worth criteria wherein Investment Advisers as an Individual need to have a net tangible asset of value not less than Rs. Five lakhs. It is observed that as per the net worth certificate (issued by - Sunny Balani & Co Chartered Accountants) forwarded by him, IA- Ketan Bora is having a net worth of Rs. Rs.3,85,100 /- (Rs. Three Lakhs Eighty Five Thousand One Hundred only) as on 17th October 2023. Copy of Net Worth Certificate (Annexure F)

4.8.2. The Noticee in its reply to the findings of Inspection report submitted that, *as per regulation 8 of SEBI (IA) regulations 2013,an individual IA is required to a minimum net worth in tangible assets of not less than Rs. 1 Lakh .But he was unaware of the amendment made in the same in year 2020 and again this is a genuine mistake as a lack of knowledge of amendment in the regulation.*

4.8.3. BASL in this regard has given its remarks that, IA - Ketan Bora has not complied with the networth requirement as specified in Regulation 8 of the IA regulation.

4.8.4. SEBI in this regard observed that, the claims made by the IA are not worthy of consideration. The remarks of the BASL are worthy of being taken note of. It is the duty and responsibility of the IA to be kept abreast with the latest development in the regulations, particularly in a critical requirement of capital adequacy/ net worth.

In view of the above, it is alleged that the Noticee had violated Regulation 8 of IA Regulations.

…."

7. In this regard vide email dated May 24, 2024, Noticee requested for an opportunity of hearing, Further, vide email dated June 05, 2024, Noticee submitted its reply to the SCN. A signed reply was also received from the Noticee on June 06, 2024. The key submissions made by Noticee as reply to the SCN, are as under:

Point No. 4.1. NISM Certification

Reply to Point No. 4.1 – Honestly, I was unaware of the regulation regarding the renewal of NISM Certification otherwise I would have renewed the same within the due time. So, kindly consider this as a genuine mistake as a result of lack of knowledge of regulation. I, thus request you to take a lenient view on the same.

Point No. 4.2. Maintenance of Books Of Accounts, Records etc.

Reply to Point No. 4.2 – I have maintained the basic details like Name, Address, Phone Number and Email ID at my end. The same details were submitted to the inspection team on 11th October 2023. The records were maintained in the Customized CRM and also my Razorpay Portal. Since, I was a new entrant into this business and no one knew me I was running the introductory offers at a price which was very low compared to my competitors to build the credibility so they could test me and then subscribe to my actual services.

However, I have not entered into agreements with any subscriber as it was only an introductory offer and I was not treating them as my clients and I only intended them to test my service before going for actual services.

I, thus request you to consider my submission and take the lenient view on the same.

Point No. 4.3. Client On-Boarding Process

Reply to Point No. 4.3 - I have maintained the basic details like Name, Address, Phone Number and Email ID at my end. The same details were submitted to the inspection team on 11th October 2023. The records were maintained in the Customized CRM and also my Razorpay Portal.

However, I have not entered into agreements with any subscriber as it was only an introductory offer and I was not treating them as my clients as I only intended them to test my service before going for actual services. Also, I was in the process of drafting the relevant agreements and KYC compliances to be executed with the prospective clients with the help of CS, CA and Advocates.

Point No. 4.4. Suitability

Reply to Point No. 4.4 – I was offering only 2 services as a trial to the subscribers. On the offer page it was clearly mentioned the amount of capital required and other basic features of the services. So, the subscriber already knew the details and whether this service is suitable to him/her and it also helped me to identify the right audience for the actual services which were to be offered in the future. Again, as mentioned in reply to point number 4.2 I was not treating my subscribers as clients, so, I have not done the Risk Profiling Process. However, I was in the process of making a questionnaire where I could capture the details for risk profiling after their offer ends and then provide them a suitable service later.

Point No. 4.5. Risk Profiling

Reply to Point No. 4.5 – I was offering only 2 services as a trial to the subscribers. On the offer page it was clearly mentioned the amount of capital required and other basic features of the services. So, the subscriber already knew the details and whether this service is suitable to him/her and it also helped me to identify the right audience for the actual services which were to be offered in the future. Again, as mentioned in reply to point number 4.2 I was not treating my subscribers as clients, so, I have not done the Risk Profiling Process. However, I was in the process of making a questionnaire where I could capture the details for risk profiling after their offer ends and then provide them a suitable service later.

Point No. 4.6. Disclosures To Clients

Reply to Point No. 4.6 – On the offer page of my services, I was clearly mentioning that I am a SEBI registered Investment Advisor and all the details and the features of the services, with the proper disclaimers were given. Also, I was not trading or investing during the period when I was offering services to the subscribers. So, in my interpretation I have complied with the said regulation and felt there is no need of any additional disclosure of information that could create conflict of interest.

Point No. 4.7. Maintenance of Policy

Reply to Point No. 4.7 – As mentioned earlier, I was not considering my subscribers as clients. I have accepted the payments from more than 3000 subscribers and since they were not clients in my interpretation I have not violated the provisions of these regulations. I would also like to inform that I made the application for RA first in the month of August 2022 even before accepting the single payment and in my understanding there is no restriction of 150 clients for RA so, I was running the introductory offer to build the credibility and test my services.

Point No. 4.8. Capital Adequacy / Net Worth

Reply to Point No. 4.8 – I would like to humbly submit that I was unaware of the amendment made in the year 2020 that an IA should have a net worth of Rs.5 lakhs. My consultant suggested that IA should have net worth of Rs. 1 lakh minimum and so I was in compliance of the said regulation.

So, kindly accept it as a genuine mistake as a result of lack of knowledge of regulation and take a lenient view on the same.

I would like to add few points to bring to your notice which would help you to pass any judgement or order in this enquiry proceedings.

- I have not made any fake promises to the subscribers
- I have not guaranteed returns of any kind
- I have not charged exorbitant fees for my services
- I have not committed any fraud like not providing service after accepting the payment
- In some cases, I have also refunded where payments were made by mistake
- There were no complaints against me on SCORES.
- I did not trade in my personal accounts during the period of service.

- I used to hold a regular doubt clearing session for subscribers with my team.
- I have never tried to take access of subscribers trading accounts.
- I have never talked to subscribers regarding profit sharing services.
- I have never offered multiple services to any subscribers.
- I was continuously educating my subscribers on how to take trading in the right manner and follow risk management, money management and not have unrealistic expectations from the stock market.

I shut down my business from 3rd April 2023 way before the proceedings or inspection were initiated against me on 14th September 2023. I was literally frustrated with the procedures and process and lack of support from the SEBI officers handling my RA Registration for almost 6-8 months. If, I had any fraudulent intentions I would have continued doing the business till date but I did not do so because I genuinely made an attempt to help the people but I could not help them as my RA registration got stuck multiple times. For Research Analyst Registration, I submitted my last application for surrender of Individual IA on 21st February 2023 and the 1 complaint against me was raised on 5th March 2023 after the application was made. I tried to resolve the complaint but the portal was not running for many days and it took me almost 2 months to resolve the same as the complainant was not responding to my calls and emails and hence my RA application got rejected.

All these events added to the frustration and anxiety and hence I finally decided to shut down the thriving business which was a big setback for me personally because I was not earning for almost 4 years before starting this business. If I had any malicious or fraudulent intentions I would have continued doing the business till date.

In my understanding, I have not committed any fraud or did any malicious activity. I might have violated IA regulations by mistake due to lack of knowledge and improper guidance from the intermediaries.

So, in view of the above, I would request your learned office to take a lenient view and not make an appropriate recommendation against me as prescribed under Regulation 26 of the SEBI (Intermediaries) Regulations, 2008 for the alleged violations..

8. In the interest of principles of natural justice, vide Hearing Notice dated May 27, 2024, the Noticee was provided an opportunity of hearing on June 06, 2024. On the scheduled date of hearing, the Noticee appeared for the said hearing opportunity along with its his Authorized Representative viz., Shri Sunny Balani (both collectively also referred to as 'ARs'), wherein the ARs inter alia relied upon and reiterated the written submissions made vide its reply dated June 05, 2024. The ARs interalia also indicated that there were no further /additional submissions to be made in respect of the Noticee.

D. CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are:

Issue No. I: **Whether the Noticee had violated the provisions of IA Regulations, as alleged?**

Issue No. II: **If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 15EB of the SEBI Act, 1992?**

Issue No. III: **If yes, what should be the monetary penalty that can be imposed upon the Noticee?**

10. The relevant extracts of the provisions of law alleged to have been violated are reproduced below for reference:

"….

SEBI IA Regulations, 2013

"…..

Qualification and certification requirement.

7.

….

(2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services - (a)from NISM; or (b)from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM: Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements: Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.]

….

Networth.

8. (1) Investment advisers who are non-individuals shall have a net worth of not less than fifty lakh rupees. Explanation. — For the purposes of this regulation, "networth" means the aggregate value of paid up share capital plus free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses, deferred expenditure not written off, including miscellaneous expenses not written off, and networth requirement for other services offered by the advisers in accordance with the applicable rules and regulations.

(2) Investment advisers who are individuals shall have net tangible assets of value not less than five lakh rupees:

Provided that existing investment advisers shall comply with the networth requirement within three years from the date of commencement of the SEBI (Investment Advisers)(Amendment) Regulations, 2020.]

….

Conditions of certificate.

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

….

(e) individuals registered as investment advisers whose number of clients exceed one hundred and fifty in total, shall apply for registration as non-individual investment adviser within such time as may be specified by the Board.

….

General responsibility.

15.

….

(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.

….

Risk Profiling

16. Investment adviser shall ensure that,-

(a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-

(i) age;

(ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ;

(iii) income details;

(iv) existing investments/ assets;

(v) risk appetite/ tolerance;

(vi) liability/borrowing details.

(b) it has a process for assessing the risk a client is willing and able to take, including:

(i) assessing a client's capacity for absorbing loss;

(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;

(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

(c) where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;

(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:

(i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;

(ii) questionnaire is not structured in a way that it contains leading questions.

(e) risk profile of the client is communicated to the client after risk assessment is done;

(f) information provided by clients and their risk assessment is updated periodically.

….

Suitability

17. Investment adviser shall ensure that,-

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(c) It understands the nature and risks of products or assets selected for clients;

(d) It has a reasonable basis for believing that a recommendation or transaction entered into:

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

….

Disclosures to clients.

18. (1) An investment adviser shall disclose to a prospective client, all material information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether or not to avail its services.

(4) An investment adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice.

(5) An investment adviser shall disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.

(6) An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.

(7) An investment adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client.

Maintenance of records.

19. (1) An investment adviser shall maintain the following records,-

(a) Know Your Client records of the client;

(b) Risk profiling and risk assessment of the client;

(c) Suitability assessment of the advice being provided;

(d) Copies of agreements with clients, incorporating the terms and conditions as

may be specified by the Board;]

(e) Investment advice provided, whether written or oral;

(f) Rationale for arriving at investment advice, duly signed and dated;

(g) A register or record containing list of the clients, the date of advice, nature of

the advice, the products/securities in which advice was rendered and fee, if any

charged for such advice.

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

(3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India 42[and submit a report of the same as may be specified by the Board].

…."

11. Before proceedings with the matter on merits, I would first deal with one key contentions which had been repeatedly raised by the Noticee multiple times throughout his submissions, viz. "*I have not entered into agreements with any subscriber as it was only an introductory offer and I was not treating them as my clients and I only intended them to test my service before going for actual services.*"

11.1. In this regard, I note from material available on record that under regulation 2(m) of the IA regulations investment adviser is defined as follows:

"investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;

And, under regulation 2(l) of the IA regulations investment advise is defined as follows:

"investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;

11.2. I note that, the Noticee as per his submission had not categorically denied or disputed that, he was providing investment advisory services for a fee, in fact in the instant matter Noticee in its reply dated June 05, 0224 had stated as follows:

i. *"…I was running the introductory offers at a price which was very low compared to my competitors…"*
ii. *"..I was offering only 2 services.."*
iii. *"…I have accepted the payments from more than 3000 subscribers.."*
iv. *"..I have not charged exorbitant fees for my services.."*
v. *"..I have not committed any fraud like not providing service after accepting the payment.."*
vi. *"..There were no complaints against me on SCORES…"*
vii. *".. I was continuously educating my subscribers on how to take trading in the right manner and follow risk management, money management and not have unrealistic expectations from the stock market.."*

11.3. I note that interalia the following invoices were issued in the name of Insane traders, which are available on record:

S NO.	Invoice Number and date	Amount (incl. of GST)	Item	Bill To
1	INV-001999 (Date 27-03-2023)	3540	Options (Regular Monthly Income Plan) Duration 3 Months	Asxxxx Sharma
2	INV-001978 (Date 22-03-2023)	3540	Options (Regular Monthly Income Plan) Duration 3 Months	Bhxxxx Tolani
3	INV-001469 (Date 27-02-2023)	3540	Index Futures Intraday Duration 3 Months	CA PC xxxxx
4	INV-000411 (Date 31-01-2023)	1770	Index Futures Intraday Duration 3 Months	Dxxxxxx Kamatkar

11.4. I note from the Table above that, these invoices offering services i.e, Options (Regular Monthly Income Plan) and Index Futures Intraday for 3 month duration were issued to different persons on different dates.

11.5. I further, note that, the Noticee vide its submission dated September 09, 2023 had interalia stated that, I recommend advice under below mentioned telegram channels: Insane Traders – Index Futures, Insane trader – Options and Insane traders – Future Intraday. I note from the material available on record that, a screenshot of its telegram channel (vide which Noticee was rendering advice) was also submitted by a complainant along with his complaint dated March 04, 2023 with respect to the Noticee, I note that, the complaint was later marked as resolved.

11.6. I note from the pre inspection questionnaire submitted by the Noticee that, the details of fees collected yearwise and product /scheme wise were as follows:

S No.	Name of product	Fees(in Rs.)	Frequency of payment	Brief of Services offered
1.	Index Futures Intraday Stock Options Bahubali portfolio recommendations	31, 93,670 44,49,780 59,000	Quarterly One Time payment	Intraday recommendations on nifty and bank nifty Stock Options Recommendations

I note from the Table above that, Noticee at Point 25 of the pre inspection questionnaire had submitted that, he had collected fees as detailed above by offering the various products i.e, Index Futures Intraday, Stock Options, and Bahubali portfolio recommendations, under the head Brief of Services Offered these services were described as Intraday, recommendation on nifty and bank nifty and stock Options recommendations.

11.7. I note from the material available on record and more specifically the above submissions of the Noticee that, the act of holding an Investment advisor certificate, and holding itself out as an investment advisor and providing investment advice for a fee by the Noticee to clients or other persons or group of persons would by its nature, be under the definition of Investment adviser in terms of regulation 2(m) of the IA regulations. From the plain reading of the contents of the, copies of invoices, and replies of Noticee to the Pre inspection Questionaire etc., and from the nature of products and services being offered by the Noticee viz, *Options (Regular Monthly Income Plan), Index Futures Intraday, Intraday, recommendation on nifty and bank nifty, Stock options recommendations etc.,* it is evident that the services being offered were in the nature of investment advise in terms of regulation 2(l) of the IA regulations. In this regard, in view of the foregoing discussion regarding role of Noticee as an investment adviser and his obligations thereof, I note that, the contention of the Noticee that, he was not treating the subscribers, as clients is devoid of merit and is not acceptable.

12. I now proceed to deal with the matter having regard to the facts and circumstances, material available on record and submissions of the Noticee on merits:

Issue No. I: Whether the Noticee had violated the provisions of IA Regulations, as alleged?

13. The following was inter alia observed and alleged in respect of the Noticee:

13.1. **NISM Certification:**

As per onsite inspection conducted at registered address of IA- Ketan Bora, it has been observed that IA- Ketan Bora has not renewed his NISM X-A & NISM X-B certification as prescribed in IA Regulations.

13.1.1. In this regard, it had inter alia been observed and alleged that, IA- Ketan Bora had not renewed his certification as prescribed in the IA Regulations.

13.1.2. I note from the reply of the Noticee dated June 05, 2024 that, the submission of the Noticee in this regard, are in the nature of admission as the Noticee had submitted that, *"Honestly, I was unaware of the regulation regarding the renewal of NISM Certification otherwise I would have renewed the same within the due time."*

13.1.3. In this regard, I note that Regulation 7(2) of IA Regulations provides that,

"Qualification and certification requirement.

7. (2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment

advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services -
(a)from NISM; or
(b)from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM:
Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:
Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.]"

13.1.4. I note that, in terms of the Regulation 7(2) of IA Regulations, the Noticee was obligated to meet the certification requirements at all times, and was supposed to obtain fresh certification before the expiry of the validity of the existing certification. Admittedly, the Noticee failed to do so. In view thereof, I find that the allegation that, Noticee had not renewed his NISM X-A & NISM X-B certification as prescribed in IA Regulations, stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 7(2) of IA Regulations.

13.2. **Maintenance of Books of Accounts, Records etc.**

IA-Ketan Bora had failed to maintain and provide the record of clients and copy of agreement executed between him and his clients. Also, all the required and relevant data related to his clients was not available at the time of onsite inspection.

13.2.1. In this regard, I note that Regulation 19 (1) of IA Regulations, provides that,

"Maintenance of records.
19. (1) An investment adviser shall maintain the following records,-
(a) Know Your Client records of the client;
(b) Risk profiling and risk assessment of the client;
(c) Suitability assessment of the advice being provided;
42[(d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;]
(e) Investment advice provided, whether written or oral;
(f) Rationale for arriving at investment advice, duly signed and dated;

(g) A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice."

13.2.2. In this regard, I note that, in terms of Regulation 19 (1) of IA Regulations Noticee was obligated to interalia maintain certain details as specified viz., *Know Your Client records of the client, Risk profiling and risk assessment of the client, Suitability assessment of the advice being provided, Suitability assessment of the advice being provided, Investment advice provided, Rationale for arriving at investment advice, Investment advice provided, register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.* In this regard, I note that, the Noticee has submitted that, *I have maintained the basic details like Name, Address, Phone Number and Email ID at my end. The same details were submitted to the inspection team on 11th October 2023. The records were maintained in the Customized CRM and also my Razorpay Portal. Since, I was a new entrant into this business and no one knew me I was running the introductory offers at a price which was very low compared to my competitors to build the credibility so they could test me and then subscribe to my actual services. However, I have not entered into agreements with any subscriber as it was only an introductory offer and I was not treating them as my clients and I only intended them to test my service before going for actual services.*

13.2.3. In this regard, in view of the foregoing discussion more specifically at para 11 above, regarding role of Noticee as an investment adviser and his obligations thereof, I note that, the contention of the Noticee that, he was not treating the subscribers, as clients cannot be accepted. Further, the submission of the Noticee that, "*I have not entered into agreements with any subscriber as it was only an introductory offer and I was not treating them as my clients and I only intended them to test my service before going for* *actual services"* were in the nature of admission that, the Noticee did not enter into agreements, the details of which were interlalia required to be maintained in terms of Regulation 19 (1) of IA Regulations. I also note that, the Noticee had submitted that, he has collected details, i.e, *Name, Address, Phone Number and Email ID.* I note that this submission is in exclusion of other details as specified under Regulation 19 (1) of IA Regulations. The Noticee had further, submitted that, *The records were maintained in the Customized CRM and also my Razorpay Portal.* However, I note that, Noticee had not demonstrated with relevant details and documents that he was maintaining the records in terms of and as specified under Regulation 19 (1) of IA Regulations.

13.2.4. In view thereof, I find that the allegation that, Noticee had failed to maintain and provide the record of clients and copy of agreement executed between him and his clients, and all the required and relevant data related to his clients were not available at the time of onsite inspection, stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 19 (1) of IA Regulations.

13.3. **Client On-Boarding Process**

IA-Ketan Bora had failed to provide details of KRA process at the time of on-site inspection. IA-Ketan Bora has also submitted in his Pre-Inspection Questionnaire that he has not followed the KYC Process while on-boarding clients.

13.3.1. In this regard, I note that Regulation 15(8), of IA Regulations, provides that,

> ***"General responsibility.***
> ***15.*** *(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time. "*

and Regulation 19 (1) (a) of IA Regulations, provides that:

Maintenance of records.

19. *(1) An investment adviser shall maintain the following records,-*
(a) Know Your Client records of the client;

13.3.2. In this regard, I note that in terms of Regulation 15(8) and Regulation 19 (1) (a) of IA Regulations, Noticee was interalia obligated to adhere to KYC procedure as specified by board and maintain KYC records of its clients, I note that, Noticee in his Pre-Inspection Questionnaire had also submitted that he had not followed the KYC Process while on-boarding clients. In this regard, I note from the reply of the Noticee dated June 05, 2024 that, the submission of the Noticee are in the nature of admission in so far as the Noticee had submitted that, "*I have maintained the basic details like Name, Address, Phone Number and Email ID at my end. ….Also, I was in the process of drafting the relevant agreements and KYC compliances to be executed with the prospective clients with the help of CS, CA and Advocates."* as Noticee admittedly had stated to be in the process of drafting the relevant agreements and KYC compliances to be executed, and the Noticee had collected basic details in lieu. I note that, Noticee had not demonstrated with relevant details and documents that he was adhering to the KYC process and maintaining the relevant KYC records as specified and obligated under Regulation 15(8) and Regulation 19 (1) (a) of IA Regulations respectively.

13.3.3. In view thereof, I find that the allegation that, the Noticee had failed to provide details of KRA process at the time of on-site inspection and also the Noticee failed to follow the KYC process while onboarding the clients, Stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 15(8) and Regulation 19 (1) (a) of IA Regulations.

13.4. **Suitability**

IA-Ketan Bora has failed to provide the documented process flow to identify risk profile/ risk score of clients to decide on their suitability for financial products.

13.4.1. In this regard, I note that Regulation 17 of IA Regulations, provides that,

Suitability.
17. Investment adviser shall ensure that,-
(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;
(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;
(c) It understands the nature and risks of products or assets selected for clients;
(d) It has a reasonable basis for believing that a recommendation or transaction entered into:
(i) meets the client's investment objectives;
(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;
(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.
(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss."

13.4.2. I note from the reply of the Noticee dated June 05, 2024 that, the submission of the Noticee are in the nature of admission as the Noticee had submitted that, *I was not treating my subscribers as clients, so, I have not done the Risk Profiling Process. However, I was in the process of making a questionnaire where I could capture the details for risk profiling after their offer ends and then provide them a suitable service later.* In this regard I note that, Noticee had not demonstrated with relevant details and documents that he was maintaining a documented process flow to identify risk profile/ risk score of clients to decide on their suitability for financial products in terms of and as specified under Regulation 17 of IA Regulations.

13.4.3. In view thereof, I find that the allegation that, Noticee had failed to provide the documented process flow to identify risk profile/ risk score of clients to decide on their suitability for financial products, which was required under Regulation 17 of IA regulations, stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 17 of IA Regulations.

13.5. **Risk profiling**

IA-Ketan Bora has failed to provide the documented process flow and the detail questionnaire for risk profiling of his client.

13.5.1. In this regard, I note that Regulation 16 of IA Regulations, provides that,

Risk profiling.
16. Investment adviser shall ensure that,-
(a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-
(i) age;
(ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ;
(iii) income details;
(iv) existing investments/ assets;
(v) risk appetite/ tolerance;
(vi) liability/borrowing details.
(b) it has a process for assessing the risk a client is willing and able to take, including:
(i) assessing a client's capacity for absorbing loss;
(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;
(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.
(c) where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;
(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:
(i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;
(ii) questionnaire is not structured in a way that it contains leading questions.

(e) risk profile of the client is communicated to the client after risk assessment is done;
(f) information provided by clients and their risk assessment is updated periodically.

13.5.2. In this regard, I note from the reply of the Noticee dated June 05, 2024 that, the submission of the Noticee are in the nature of admission as the Noticee as part of its submission as reply to the SCN has submitted that, *I was not treating my subscribers as clients, so, I have not done the Risk Profiling Process. However, I was in the process of making a questionnaire where I could capture the details for risk profiling after their offer ends and then provide them a suitable service later.* In this regard, in view of the foregoing discussion more specifically at para 11 above, regarding role of Noticee as an investment adviser and his obligations thereof, I note that, the contention of the Noticee that, he was not treating the subscribers, as clients cannot be accepted. I note that, Noticee has not demonstrated with relevant details and documents that he was doing risk profiling of clients in terms of and as specified under Regulation 16 of IA Regulations.

13.5.3. In view thereof, I find that the allegation that, Noticee had failed to provide the documented process flow and the detail questionnaire for risk profiling of his client, which was required in terms of Regulation 16 of IA regulations, stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 16 of IA Regulations.

13.6. Disclosures to Clients

IA- Ketan Bora has failed to make disclosures such as about material information about itself including its business, disciplinary history, any actual or potential conflict of interest, etc. as mandated by SEBI IA Regulations.

13.6.1. In this regard, I note that Regulation 18 of IA Regulations, provides that,

Disclosures to clients.

18. (1) An investment adviser shall disclose to a prospective client, all material information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether or not to avail its services.

(4) An investment adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice.

(5) An investment adviser shall disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.

(6) An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.

(7) An investment adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client.

13.6.2. In this regard, I note from the reply of the Noticee dated June 05, 2024 that, the submission of the Noticee are in the nature of admission as the Noticee has submitted that, *On the offer page of my services, I was clearly mentioning that I am a SEBI registered Investment Advisor and all the details and the features of the services, with the proper disclaimers were given. Also, I was not trading or investing during the period when I was offering services to the subscribers. So, in my interpretation I have complied with the said regulation and felt there is no need of any additional disclosure of information that could create conflict of interest.* I note that, these submissions of the Noticee are mere statements and assertions, as the Noticee has not demonstrated with relevant details and documents that he had made required disclosures interalia about material information about itself including its business, disciplinary history, any actual or potential conflict of interest, etc. as mandated by Regulation 18 of IA Regulations. In view thereof, the contention of the Noticee in this regard are devoid of merit and not acceptable.

13.6.3. In this regard, I note that in terms of Regulation 18 of IA Regulations, the Noticee was obligated to make disclosures such as about material information about itself including its business, disciplinary history, any actual or potential conflict of interest, etc., The Noticee has submitted that, he has on his offer page disclosed about his registration, details and services being offered, along with certain disclaimers. I note that, such generic information does not suffice as disclosures in terms of Regulation 18 of the IA regulations, hence the submission of the Noticee can not be accepted.

13.6.4. In view thereof, I find that the allegation that, the Noticee had failed to make disclosures such as about material information about itself including its business, disciplinary history, any actual or potential conflict of interest, etc. as mandated by IA Regulations, Stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 18 of IA Regulations.

13.7. **Maintenance of Policy**

IA- Ketan Bora has not applied for registration as non-individual Investment Advisor upon reaching more than 150 clients.

13.7.1. In this regard, it had inter alia been observed and alleged that, IA- Ketan Bora had not applied for registration as non-individual Investment Advisor upon reaching more than 150 clients.

13.7.2. In this regard, I note that Regulation 13 (e) of IA Regulations, provides that,

Conditions of certificate.

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

[(e) individuals registered as investment advisers whose number of clients exceed one hundred and fifty in total, shall apply for registration as non-individual investment adviser within such time as may be specified by the Board.]

13.7.3. In this regard, the Noticee in his reply dated June 05, 2024 had submitted that, *“I was not considering my subscribers as clients. I have accepted the payments from more than 3000 subscribers and since they were not clients in my interpretation”*. In this regard, in view of the foregoing discussion more specifically at para 11 above, regarding role of Noticee as an investment adviser and his obligations thereof, I note that, the contention of the Noticee that, he was not treating the subscribers, as clients cannot be accepted. I note that, these submissions of the Noticee are based on his own assumptions and hypothesis, as despite admittedly accepting payments from more than 3000 subscribers, Noticee on his own accord decided not to not treat them as clients. I note that in terms of Regulation 13(e) of IA Regulations, the Noticee was obligated to apply for registration as non-individual Investment Advisor upon exceeding more than 150 clients, admittedly the Noticee has accepted payments from more than 3000 people as an investment adviser, however, the Noticee has not demonstrated with relevant details and documents that he had applied for registration as non-individual Investment Advisor upon exceeding more than 150 clients as obligated under Regulation 13 (e) of IA Regulations. In view thereof, the contention of the Noticee in this regard are devoid of merit and not acceptable.

13.7.4. Noticee has also submitted that, *I made the application for RA first in the month of August 2022 even before accepting the single payment and in my understanding there is no restriction of 150 clients for RA so, I was running the introductory offer to build the credibility and test my services.* The submission of the Noticee that, he has already applied for registration as an RA has no merit, as this application and the obligation in terms of Regulation 13(e) of IA Regulations are independent of each other. In view of the same submission of the Noticee are based on his own assumptions and hypothesis and can not be accepted.

13.7.5. In view thereof, I find that the allegation that, the Noticee failed to apply for registration as non-individual Investment Advisor upon reaching more than 150 clients, Stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 13 (e) of IA Regulations.

13.8. **Capital Adequacy / Net worth**

IA- Ketan Bora has not complied with the Net worth criteria wherein an Individual Investment Advisers, need to have a net tangible asset of at least Rs. 5 lakhs. It is observed that as per the net worth certificate (issued by - Sunny Balani & Co Chartered Accountants) forwarded by him, IA- Ketan Bora is having a net worth of Rs. Rs.3,85,100 /- (Rs. Three Lakhs Eighty Five Thousand One Hundred only) as on 17th October 2023.

13.8.1. In this regard, it has inter alia been observed and alleged that, IA- Ketan Bora Proprietor of Insane Traders has violated Provision of Regulation 8 of SEBI (IA) Regulation 2013 related to Net worth criteria wherein Investment Advisers as an Individual need to have a net tangible asset of value not less than Rs. Five lakhs. It is observed that as per the net worth certificate (issued by - Sunny Balani & Co Chartered Accountants) forwarded by him, IA- Ketan Bora is having a net worth of Rs.3,85,100 /- (Rs. Three Lakhs Eighty Five Thousand One Hundred only) as on 17th October 2023. Copy of Net Worth Certificate.

13.8.2. In this regard, I note that Regulation 8 of IA Regulations, provides that,

Networth.

8. (1) Investment advisers who are non-individuals shall have a net worth of not less than fifty lakh rupees.

Explanation. — For the purposes of this regulation, "networth" means the aggregate value of paid up share capital plus free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses, deferred expenditure not written off, including miscellaneous expenses not written off, and networth requirement for other services offered by the advisers in accordance with the applicable rules and regulations.

(2) Investment advisers who are individuals shall have net tangible assets of value not less than five lakh rupees:

Provided that existing investment advisers shall comply with the networth requirement within three years from the date of commencement of the SEBI (Investment Advisers) (Amendment) Regulations, 2020.]

13.8.3. I note from the reply of the Noticee dated June 05, 2024 that, the submission of the Noticee are in the nature of admission as the Noticee had submitted that, *I would like to humbly submit that I was unaware of the amendment made in the year 2020 that an IA should have a net worth of Rs.5 lakhs. My consultant suggested that IA should have net worth of Rs. 1 lakh minimum and so I was in compliance of the said regulation. So, kindly accept it as a genuine mistake as a result of lack of knowledge of regulation and take a lenient view on the same.*

.

13.8.4. In this regard, I note that in terms of Regulation 8 of IA Regulations, the Noticee was obligated to maintain a networth of Rs. 5 lakh, which admittedly Noticee failed to maintain as his networth was Rs.3,85,100 as per the Networth certificate submitted by the Noticee .

13.8.5. In view thereof, I find that the allegation that, the Noticee had failed to comply with the Net worth criteria, Stands established. Therefore, I hold that the Noticee had violated provisions of Regulation 8 of IA Regulations.

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15EB of the SEBI Act, 1992?

14. It has been established in the foregoing paragraphs that Noticee had violated provisions of IA Regulations.

15. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the*

statutory obligation as contemplated by the Act and the Regulations is established......"

16. Therefore, for the established violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Section 15EB of SEBI Act which provides as following:

"…

15EB: Penalty for default in case of investment adviser and research analyst.

Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

…"

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

17. While determining the quantum of penalty under Section 15EB of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

SEBI Act

"……..…

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—

a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b. the amount of loss caused to an investor or group of investors as a result of the default;

c. the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

………..…"

18. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors, groups of investors, as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed

by the Noticee are repetitive in nature. However, I cannot ignore the fact that Noticee being a SEBI registered Investment Adviser was required to comply with the extant applicable provisions of laws, which SEBI is duty bound to enforce. The Noticee failed to comply with the provisions of law, as brought out in the foregoing, and such failure and non-compliances accordingly needs to be dealt with suitable penalty.

E. ORDER

19. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticee, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Name of the Noticee	Penalty under Section	Penalty (in Rs.)
Ketan Bora Proprietor of the Insane Traders	Section 15EB of the SEBI Act	8,00,000/- (Rupees Eight Lakhs only)

20. The Noticees shall remit /pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

21. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization

of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

22. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: October 29, 2024
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER