BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-5/SVKM/AO/04-06/2016-17]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 IN THE MATTER OF UNIQUE VISION FINANCIAL ADVISORY PVT. LIMITED

In respect of

Sr. No.	Name of entity	PAN	Address	Order No.
1	Unique Vision Financial Advisory Pvt. Ltd	AABCU 3600J	Heaven Park, Mohmadwadi, S. No. 48/3 C/4, Hadapsar, Pune – 411028	EAD-5/SVKM/ AO/04/2016-17
2	Shri Chandrakant Shamrao Dhole	AGJPD 5155A		EAD-5/SVKM/ AO/05/2016-17
3	Shri Ravindra Shankar Kaurav	AOTPK 5176L	S. No.75 , Sayyednagar, Hamal Chawl, Hadapsar Pune - 411028	EAD-5/SVKM/ AO/06/2016-17

BACKGROUND

1. Securities and Exchange Board of India **(SEBI)** issued an ad-interim ex-parte order dated January 29, 2015 **(Interim Order)** under section 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) against Unique Vision Financial Advisory Pvt. Ltd **(The Company)** and its Directors namely Shri Chandrakant Shamrao Dhole and Shri Ravindra Shankar Kaurav (*hereinafter referred to individually by their name and collectively as **"Noticees"***) for the alleged violation of Section 12(1) of SEBI Act, 1992 read with SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as **"PM Regulations"**) for carrying out Portfolio Management Services without obtaining Certification of Registration from SEBI. Noticees have collected Rs.1,84,60,000 from the general public for such activities promising them returns from stock market operations etc.

After hearing the noticees, Whole Time Member (WTM) of SEBI issued order dated July 22, 2015 in which it was directed that;

a. Noticees are prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, in any manner whatsoever, for a period of four (4) years.

b. Noticees shall not undertake, either directly or indirectly, any activity in the securities market without obtaining registration from SEBI as required under the securities laws.

c. *Noticees shall expeditiously return the monies received from its clients along with the promised returns, in respect of its unregistered portfolio manager activities as found in above and submit a certificate from a peer reviewed Chartered Accountant, within a period of 3 months from the date of this Order and;*

d. SEBI may also initiate Adjudication proceedings under Chapter VIA of the SEBI Act against Unique Vision Financial Advisory Pvt. Limited and its promoters/ directors namely Mr. Chandrakant Shamrao Dhole and Mr. Ravindra Shankar Kaurav for the violation of indulging in unregistered portfolio management services in the securities market in breach of Section 12(1) of the SEBI Act, 1992 and Regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer **(AO)** vide communication of Proceedings dated February 24, 2016 to inquire into and adjudge under Section 15HB of SEBI Act, 1992, the alleged violation of the provisions of Section 12(1) of SEBI Act, 1992, read with Regulation 3 of SEBI (PM) Regulations, 1993 by the noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice dated June 20, 2016 (hereinafter referred to as "**SCN**") was issued to the noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') read with section 15I of SEBI Act, 1992 to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HB of SEBI Act, 1992 for the aforesaid alleged contravention of the provisions of Section 12(1) of SEBI Act, 1992, read with Regulation 3 of SEBI (PM) Regulations, 1993. It was alleged in the SCN that the noticees were offering Portfolio Management Services to its clients and functioned as 'Portfolio Manager' in the securities market without obtaining a certificate of registration from SEBI.

4. Chandrakant Shamrao Dhole, Director of Unique Vision Financial Advisory Pvt. Ltd submitted reply to SCN vide letter dated July 08, 2016. No separate reply was filed by Unique Vision Financial Advisory Pvt. Ltd and Ravindra Shankar Kaurav. The relevant portions of the aforesaid reply to the SCN is reproduced hereunder:-

- *"The four complainants viz Mr. Bothe, Mrs. Bothe, Mr. Harde, and Mrs. Thange have already filed a Court case against me and against my Company. Except these four people nobody has filed complaint against us with SEBI. We have started giving part payment to some people.*

- *I have taken money from people on my personal level and for security of money I had given letter to people. I have not taken any single money on Company's account and not done any portfolio management. I have taken money from people to invest in share market, international forex market and I distributed the money to people as the payment of profit. I have lost money in stock market.*

- *In your letter you mentioned that I had taken money from people i.e. Rs.1,84,60,000 which is accepted by me but you did not mention that I returned Rs.1,35,87,636."*

5. An opportunity of personal hearing was afforded to the noticees on August 18, 2016, when the noticees namely Shri Chandrakant Shamrao Dhole and Shri Ravindra Shankar Kaurav appeared for themselves and for Unique Vision Financial Advisory Pvt. Ltd and submitted as under.

- It was admitted that Unique Vision Financial Advisory Pvt. Ltd. has collected money from about 70 persons including friends & relatives. Money was invested in stock market, forex market and also used for rotation.

- It was admitted that no certificate of registration for Portfolio Management Services was obtained from SEBI.

- It was further submitted that they have not yet refunded the money to all the clients as ordered by WTM of SEBI vide Order dated July 22nd 2015.

ISSUES FOR CONSIDERATION & FINDINGS

6. I have carefully perused the reply and submissions of the noticees and the documents available on record. The issues that arise for consideration in the present case are:

   1) Whether the noticees have violated provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993?

   2) Whether the noticees are liable for monetary penalty under Section 15HB of the SEBI Act, 1992?

   3) If yes, what should be the quantum of monetary penalty?

7. On perusal of the material available on record and having regard to the submissions made by the noticees, I record my findings hereunder.

ISSUE 1: Whether the noticees have violated provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993?

8. Unique Vision Financial Advisory Pvt. Ltd was incorporated on September 26, 2011. Its Promoters/Directors are Shri Chandrakant Shamrao Dhole (who holds 81% of the shares of the Company) and Shri Ravindra Shankar Kaurav (holds 19% of shares of the shares of the Company).

9. As per Memorandum of Association (MoA), the main objects of the Company inter alia are, *"To carry on the business as financial advisors, management advisor and provide advice in various fields, general administrative, secretarial, commercial, financial......."*.

10. The Company had offered two schemes to the general public, viz. scheme offering monthly 5% return on investment and scheme offering 100% return after 18 months, on investment. The Company had collected an amount of Rs.1,84,60,000 from 67 investors for investing in the share market through the aforesaid two schemes, since 2011. The details of the amount collected by the Company are as under:

S. No.	Details of Scheme	Amount Collected (Rs.)	No. of Investors
1	Monthly 5% Return	1,80,60,000	63
2	100% Return after 18 months	4,00,000	4
	Total	**1,84,60,000**	**67**

11. In the proccedings, the noticees admitted that funds were collected from 70 persons including friends & relatives. In the reply dated July 08, 2016, it was claimed that out of Rs.1,84,60,000 collected, they have refunded Rs.1,35,87,636 to the customers. But no documents were filed to support the said contention. In the course of personal hearing, the noticees admitted that they have not yet complied with SEBI, WTM Order dated July 22, 2015 directing them to refund the money collected from the public. The noticees have not disputed the allegations made in the SCN and admitted that 'the money collected was used

in the 'share market' and 'international forex market', wherein, losses were incurred and it was also submitted that the money of the investors was used for ‘Rotation’.

12. Noticee Shri Chandrakant Shamrao Dhole submitted that he had taken money from people on personal level and he has not taken any single money on Company’s account and not done any portfolio management but the Company had executed 'Letter of Security'/ agreement with its investors on a stamped paper signed by Chandrakant S. Dhole in his capacity as Director, Unique Vision Financial Advisory Pvt. Ltd. The Hon'ble Securities Appellate Tribunal in the case of *N. Narayanan v. The Adjudicating Officer, SEBI* (Appeal No. 29 of 2012 decided on October 5, 2012) while commenting on the role of directors, had observed that *"With the changing scenario in the corporate world the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto."*

13. The Company had offered two schemes to the general public, viz. scheme offering monthly 5% return on investment and scheme offering 100% return after 18 months, on investment for investing in the share market through the aforesaid two schemes, since 2011. It has issued post-dated cheques toward refunds/returns as guarantee for repayment of principal amount invested. It was submitted that the amounts collected was deployed in ‘stock market’, “international forex market” and for ‘money rotation’. It was submitted that money was lost heavily in the stock market. In the proceedings, when asked to explain as to how funds were used in international forex market operations and whether they are Registered Forex dealers with RBI and Foreign Exchange Dealers Association of India (FEDAI) the notices could not give a satisfactory reply.

14. The provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993 read as under:

<u>Securities and Exchange Board of India Act, 1992</u>

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:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a 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 immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

<u>Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993</u>

Regulation 3: Registration as portfolio manager —

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

Provided that a merchant banker acting as a portfolio manager immediately before commencement of the Securities and Exchange Board of India (Portfolio Managers) (Second Amendment) Regulations, 2006 may continue to do so for a period of six months from such commencement or, if he has made an application for registration under these regulations within the said period of six months, till the disposal of such application.

15. A 'Portfolio Manager' as defined under Regulation 2(cb) of the SEBI (Portfolio Managers) Regulations, 1993 is any person who <u>pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client the management or administration of a portfolio of securities or the funds of the client.</u> As stated earlier, the noticees admitted that 'the money collected was used in the 'share market', wherein, losses were incurred. Further as mentioned above, the Company executes 'letter of security' with its investors to manage their funds. Further, the object clause of the company itself proclaims that the core activity of the company is Financial Advisory business. But, it has not obtained any certificate of registration from SEBI to act as portfolio manager which is a statutory requirement. Hence, it is concluded that the Company was acting as 'Portfolio Manager' in the securities market in terms of the SEBI (PM) Regulations, 1993 without obtaining a certificate of registration from SEBI, thereby violated provisions of Section 12(1) of the SEBI Act, 1992 and Regulation 3 of the SEBI (PM) Regulations 1993.

ISSUE 2: Whether the noticees are liable for monetary penalty under Section 15HB of the SEBI Act, 1992?

16. The provisions of Section 15HB of the SEBI Act, 1992, read as under:

<u>15HB Penalty for contravention where no separate penalty has been provided:</u>
Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

17. Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*"

18. Vide order dated April 26, 2013 the Hon'ble Supreme Court of India in the matter of *N Narayanan vs. SEBI* (Appeal Nos. 4112-4113 of 2013) observed as under :-

"*SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate market abuse and that we are governed by the Rule of Law. Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and market security is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard markets integrity.*"

19. As already observed, the noticees were acting as portfolio manager without obtaining a Certificate of Registration from SEBI as required under section 12 (1) of the SEBI Act, 1992. Admittedly, they had collected Rs.1,84,60,000 from about 70 persons and failed to refund the same despite SEBI order dated July 22, 2015 directing such refund. Therefore,

I find that the noticees are liable for monetary penalty under Section 15HB of the SEBI Act, 1992.

ISSUE 3: If yes, what should be the quantum of monetary penalty?

20. The noticees, while acting as an unregistered intermediary had collected 1.85 crore rupees from innocuous clients/investors and had put the investors at great risk. The notices issued post-dated cheques to investors which have bounced and investors have filed cases under section 138 of The Negotiable Instruments Act, 1881. WTM, SEBI, Order dated July 22, 2015 directing refund of amounts to investors is also not complied with even after lapse of more than 12 months. Such activities of unregistered intermediaries in the securities market seriously compromise the regulatory framework and are detrimental to the interest of investors in securities market. In the interest of the investors and for orderly development of securities market such illegal activities in stock market should be viewed seriously.

21. For the reasons stated in the preceding paragraphs, it is established that the noticees have violated provisions of Section 12(1) of the SEBI Act, 1992 read with Regulation 3 of SEBI (Portfolio Managers) Regulations, 1993 and committed serious illegalities by acting as Portfolio Manager without obtaining a Certificate of Registration from SEBI as required under the extant laws by collecting funds from investors which they failed to return despite SEBI's order to that effect. I find that imposing a penalty of ₹ 25,00,000 (Rupees Twenty Five Lakh Only) under section 15HB of SEBI Act, 1992 on the noticees would be commensurate with the nature and gravity of the irregularities committed by the noticees.

ORDER

22. After taking into consideration the facts and circumstances of the case, the submissions made by the noticees, the nature and gravity of the charges established I, in exercise of the powers conferred under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a penalty of ₹ 25,00,000 (Rupees Twenty Five Lakh Only) under Section 15HB of the SEBI Act, 1992, on the noticees namely Unique Vision

Financial Advisory Pvt. Ltd, Shri Chandrakant Shamrao Dhole and Shri Ravindra Shankar Kaurav. The penalty is payable jointly and severally by all the noticees.

23. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department - DRA-IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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

24. In terms of rule 6 of the Rules, copies of this order are sent to the noticees and also to the Securities and Exchange Board of India.

Date : August 31, 2016
Place : Mumbai

S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer