

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under section 12(3) of Securities and Exchange Board of India Act, 1992 read with regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Sr. No.	Name of Noticee	SEBI Registration No.	PAN
1	SUMIT KUMAR WAGHMARE	INA200013099	ABRPW8653R

In the matter of Sumit Kumar Waghmare – Investment Adviser

Background

1. The present matter emanates from an Enquiry Report dated March 29, 2023 (hereinafter referred to as “**Enquiry Report**”) submitted in terms of regulation 26 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”) in respect of Mr. Sumit Kumar Waghmare (hereinafter referred to as “**SKW / Noticee**”), an Investment Adviser registered with SEBI.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) carried out an inspection of the Noticee in February 2022 in respect of the investment advisory services rendered by him for the period from April 1, 2020 to March 31, 2021. SEBI’s inspection, *inter alia*, observed non-updation and non-submission of material information by the Noticee and carrying out unregistered investment advisory activities through F3 Financials and Garuda Finance, i.e., two partnership firms where the former was allegedly formed by the ex-employers of the Noticee and the latter was formed by the Noticee and one Mr. Prateek Gupta.
3. These findings of the inspection were communicated to the Noticee on April 25, 2022 and upon examining his reply dated May 23, 2022, SEBI observed apparent violation of certain provisions of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”).

4. Accordingly, Enquiry proceedings under Chapter V of the Intermediaries Regulations were initiated against the Noticee by appointing a Designated Authority (hereinafter referred to as “**DA**”) in the matter on December 27, 2022.

Proceedings before Designated Authority

5. In light of the aforesaid findings of the inspection, the DA issued a show cause notice (hereinafter referred to as “**pre-Enquiry SCN**”) dated February 20, 2023 to the Noticee, *inter alia*, alleging violation of regulation 13(b) read with regulation 13(a) of IA Regulations and clauses 1, 5 and 8 of the Third Schedule to the IA Regulations read with regulation 15(9) of the IA Regulations. The Noticee filed his reply dated March 6, 2023 to the said show cause notice and a personal hearing was also granted to the Noticee by the DA on March 14, 2023.

6. Thereafter, based on the allegations levelled against the Noticee in the pre-Enquiry SCN, reply filed by the Noticee to the SCN, submissions made during the personal hearing and the material available on record, the DA concluded the Enquiry proceedings by submission of the Enquiry Report (“**Enquiry Report**”) dated March 29, 2023 in terms of regulation 26 of the Intermediaries Regulations wherein it was noted that the aforesaid violations alleged against the Noticee in the pre-Enquiry SCN stood established.

7. However, in view of certain factors such as the violation being technical in nature, police complaint being filed by Noticee against his ex-employers for misusing his KYC details, ceasing of the activities of Garuda Finance by the Noticee, refund of monies by the Noticee to the complainants and resolution of all complaints filed by investors against the Noticee, the DA recommended that the instant matter was not a fit case for recommending cancellation of Noticee’s registration as IA.

Present proceedings

8. Pursuant to submission of the Enquiry Report by the DA, the matter was allocated to me on April 27, 2023 and a show cause notice dated May 2, 2023 (hereinafter referred to as “**post-Enquiry SCN**”) was issued to the Noticee in terms of regulation 27(1) of the Intermediaries Regulations along with a copy of the Enquiry Report calling upon the Noticee as to why any other action as contemplated in the Intermediaries Regulations, should not be taken against him. The post-Enquiry SCN was sent to the registered address of the Noticee, however, the same

returned undelivered. The SCN was also sent to the Noticee to his registered email address vide email dated May 9, 2023 which was delivered and the Noticee filed his reply dated May 23, 2023 to the post-Enquiry SCN.

9. Subsequently, the Noticee was granted an opportunity of personal hearing before me on June 20, 2023 which was attended by him along with his authorised representative, viz., Shri Abhishek Mishra, wherein the submissions of the Noticee in his reply dated May 23, 2023 were reiterated. The Noticee also made additional post-hearing submissions vide email dated June 26, 2023.

Settlement Proceedings

10. Thereafter, the Noticee filed a settlement application dated April 28, 2023 under the provisions of SEBI (Settlement Proceedings) Regulations, 2018 ("Settlement Regulations") for settling the instant Enquiry proceedings. It is also pertinent to note that separate enforcement proceedings ("**11B proceedings**") were approved by the competent authority against the Noticee on November 30, 2022 and against three other entities (including one Mr. Prateek Gupta who was a partner of Garuda Finance) on March 3, 2023 under sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") for carrying out unregistered investment advisory activities through F3 Financials and Garuda Finance. In respect of the same, the Noticee *suo motu* filed another settlement application dated November 24, 2023 for settling the 11B proceedings.
11. The 11B proceedings were allocated to me on December 14, 2023 and an SCN dated May 16, 2024 came to be issued in the 11B proceedings against the Noticee and the three other entities. Subsequently, Mr. Prateek Gupta also filed settlement application in order to settle the 11B proceedings initiated against him. It is noted that both the settlement applications filed by the Noticee (Enquiry as well as the 11B proceedings) were withdrawn on April 2, 2024 and the settlement application filed by Mr. Prateek Gupta in the 11B proceedings was withdrawn on November 5, 2024. Pursuant to the withdrawal of the settlement applications, the proceedings for passing final orders in the Enquiry and 11B Proceedings which were kept in abeyance in line with regulation 8(1) of the Settlement Regulations were revived.

Show Cause Notices, Reply and Hearing

12. I note that the DA in his Enquiry Report did not recommend cancellation of the registration of the Noticee as an IA. However, the post-Enquiry SCN dated May 2, 2023 issued to the Noticee mentioned that the DA did not recommend any action against the Noticee. Therefore, in the interest of abundant clarity, a Supplementary SCN ("**Supplementary SCN**") dated January 24, 2025 was issued to the Noticee clarifying that the DA in his Enquiry Report found that the violations alleged against the Noticee stood established and while the DA did not recommend cancellation of registration, it was open to the Competent Authority to take any one or more of the actions contemplated in the Intermediaries Regulations and the said actions were also enumerated in the Supplementary SCN.
13. I note from the material available on record that the Noticee filed several replies during the course of the instant Enquiry proceedings, viz., on March 6, 2023 to the pre-Enquiry SCN, on May 23, 2023 to the post-Enquiry SCN, additional submissions post-hearing on June 26, 2023 and reply dated March 7, 2025 to the Supplementary SCN issued to the Noticee. Further, the Noticee had also filed a reply dated June 17, 2024 to the SCN issued against him in the 11B proceedings and in the interest of justice, the relevant portions of that reply are also considered to be a part of the record for the purpose of the instant Enquiry proceedings.
14. Pursuant to receipt of Noticee's reply to the post-Enquiry SCN dated May 23, 2023, an opportunity of personal hearing was granted to the Noticee on June 20, 2023 which was attended by him along with his authorised representative, viz., Shri Abhishek Mishra, wherein the submissions of the Noticee in his reply to the SCN were reiterated. Further, post receipt of intimation that the Noticee had withdrawn his settlement application in respect of the instant Enquiry proceedings as well as the 11B proceedings on April 2, 2024, another opportunity of personal hearing was granted to the Noticee on June 4, 2024 which was attended by him along with his authorised representative, viz., Shri Abhishek Mishra, wherein it was submitted by the Noticee that the report of the DA which did not recommend any adverse action against the Noticee may be accepted.
15. Thereafter, post receipt of intimation that Mr. Prateek Gupta had also withdrawn his settlement application in respect of the 11B proceedings on November 5, 2024,

it was decided that another opportunity of personal hearing on January 14, 2025 be granted to all the concerned entities, viz., the Noticee in the instant Enquiry proceedings and the 11B proceedings, and the other three entities (viz., Mr. Prateek Gupta, F3 Financials and Garuda Finance) against whom 11B proceedings were initiated so as to take a comprehensive view of the matter as the facts leading to the alleged violations were similar.

16. However, Mr. Prateek Gupta sought an adjournment of the hearing scheduled for January 14, 2025 on account of his mother's deteriorating health condition and the Noticee, Mr. Sumit Kumar Waghmare also requested for an adjournment and requested that the hearings for both of them may be scheduled on the same date as the matters were connected.
17. Accordingly, the hearing was rescheduled for January 24, 2025 and Mr. Prateek Gupta again sought an adjournment on account of his mother's health condition. Similarly, Mr. Sumit Kumar Waghmare also sought an adjournment of the hearing on the ground that his father needed an immediate operation owing to a fracture and again requested that the hearings for both of them may be scheduled on the same date as the matters were connected. In view of the requests, the hearings were rescheduled for February 25, 2025, however, the authorised representative of both Mr. Sumit Kumar Waghmare and Mr. Prateek Gupta, viz., Shri Abhishek Mishra, vide email dated February 4, 2025, requested that the hearings may be rescheduled to a prior date as he was scheduled to appear before the Hon'ble Securities Appellate Tribunal on February 25, 2025 in another matter. The request for rescheduling was again acceded to and the hearing were rescheduled for February 27, 2025.
18. The common hearing for Enquiry and 11B Proceedings was held on February 27, 2025 and attended by both Mr. Sumit Kumar Waghmare with his authorised representative, viz., Shri Abhishek Mishra, wherein Mr. Sumit Kumar Waghmare reiterated the submissions made in his replies filed earlier and those made during the previous personal hearings. Therefore, I am of the view that sufficient opportunity has been granted to the Noticee and the principles of natural justice have been adhered to in this matter.

19. A summary of the submissions made by the Noticee in his replies and during the personal hearings in respect of the allegations levelled against him in respect of the Enquiry proceedings are as under:

(a) Submissions regarding Allegation 1: Non-updation and non-submission of material information, i.e., change in address –

The Noticee submitted that he had intimated SEBI regarding the change of office address on February 25, 2021, however, there was a delay in the intimation as the office had already shifted in FY20. Further, he could not update the documentary evidence on SEBI Intermediary Portal (“SI Portal”) as there was no option on the Portal for submitting the documentary evidence. The Noticee contended that there was no timeline specified by SEBI for updation of information by an IA and that he intimated SEBI regarding the address change prior to the observation by the Auditor in his Compliance Audit Report. There was no clarity regarding the term ‘material change’ as it was nowhere defined or illustrated in the regulations and SEBI interpreted the clause in a way that favoured it. The Noticee also submitted that none of the investors/clients were aggrieved by this act as communication was not broken with them in any manner since the Noticee was always available on calls and emails and promptly responded to any queries of the investors/clients.

(b) Submissions regarding Allegation 2: Unregistered investment advisory activities through F3 Financials –

The Noticee submitted that the firm F3 Financials was formed by one Mr. Dipak Kumar Baid and one Mr. Hemanth Kumar and he himself was a victim of fraudulent activity since his name and documents were fraudulently used in F3 Financials by those two persons, who were his ex-employers in a firm, Global Money Control. He was neither providing any unregistered investment advisory services nor having any control over the activities of F3 Financials and the activities of F3 Financials were being carried out by Mr. Dipak Kumar Baid and Mr. Hemanth Kumar. The website of F3 Financials was also fully managed and operated by Mr. Dipak Kumar Baid and the contact details of the Noticee were nowhere mentioned on the website. Further, the address mentioned in SEBI’s letter to the Noticee dated October 3, 2019 seeking

details of activities of F3 Financials was used by Mr. Dipak Baid and his unregistered investment advisory firms such as F3 Finserve, Absolute Financials, Eco Pure India, etc.

Mr. Dipak fraudulently took signatures of the Noticee on many cheques and one of these cheques of Rs. 25,000/- deposited at the time of opening of the bank account of F3 Financials was not deposited by the Noticee who was unaware of the same as could be ascertained by the difference in handwriting between the signature and the particulars of the cheque.

The income earned by F3 Financials was declared in the Noticee's Income Tax Return (ITR) for FY20 as the Bank Account was opened through his documents and credits were also received in that account.

Further, in the complaint filed against F3 Financials, the complainant had nowhere mentioned the Noticee's name, contact details, etc. making it evident that the Noticee was having no control over the activities of F3 Financials.

The Noticee also furnished a copy of the police complaint dated March 18, 2021 filed by him in the MICO Layout Police Station, the private complaint dated October 25, 2021 filed by him before the Addl. Chief Metropolitan Magistrate, Bangalore against Mr. Dipak Kumar Baid and Mr. Hemanth Kumar in this regard.

(c) Submissions regarding Allegation 3: Unregistered investment advisory activities through Garuda Finance –

The Noticee submitted that the firm Garuda Finance was managed and operated by him and the investment advisory services provided through Garuda Finance were not unregistered as the services were provided exclusively by the Noticee, who was a SEBI-registered Investment Adviser and "Garuda Finance" was only a brand name. He claimed that a brand name was used by him as the same builds trust and is useful for attracting prospective clients. The activities of Garuda Finance started only in July 2019, post the Noticee's registration as an Investment Adviser. All the clients of Garuda Finance were aware of the fact that they were dealing with the Noticee, a registered Investment Adviser, as it was clearly disclosed on mail, client agreement, website, etc., of Garuda Finance that it was a SEBI

registered Investment Adviser and Noticee's registration number was also mentioned. The Noticee even claimed that he was disclosing his registration details along with the brand name even before the implementation of SEBI's Circular dated April 6, 2023 in this regard and that no client had ever made a complaint against him regarding misrepresentation. Further, the Noticee contended that the mere collection of fees from clients in the bank account of Garuda Finance did not lead to any harm to the investors or affected the integrity of the market.

The Noticee also submitted that Mr. Prateek Gupta was just an investor in the business and the Memorandum of Understanding (MoU) dated June 15, 2019 executed between the Noticee and Mr. Prateek Gupta clearly stated that all financial activities and business operations would only be managed by Mr. Sumit Kumar Waghmare and Mr. Prateek Gupta would not be involved in the business activities. Further, the Noticee submitted that a partnership deed was entered into between the Noticee and Mr. Prateek Gupta solely for the purpose of opening a joint Bank account and the KYC of all bank accounts was signed by both partners as Mr. Prateek Gupta, being an investor, required transparency in the business and access to financial records of the firm. Mr. Prateek Gupta was granted access to bank accounts to ease banking transactions. While opening a current bank with Axis Bank, the Bank was informed that the Noticee was registered with SEBI as an individual Investment Adviser and his registration certificate was provided to the Bank. The Partnership Deed was also modified later through which the profit-sharing ratio was altered with the Noticee having 99% of the profit share and Mr. Prateek Gupta having only 1% of the profit share, which makes it evident that the Noticee had the sole control of Garuda Finance.

With respect to registration number of another Investment Adviser, viz., Capitalvia Global Research Private Limited mentioned in one of the client agreements, the Noticee submitted that the same was unintentional and a typo error and no such issue was found in more than 50 client agreements which were checked by SEBI.

With respect to complaints lodged on the SCORES portal regarding Garuda Finance, the Noticee submitted that clients were able to lodge

complaints on the SCORES portal as they knew the Noticee's name and the complaints were lodged in his name as he was registered with SEBI. Further, all the client's grievances were resolved in a timely manner and the complaints were related to client's dissatisfaction with the service and in no manner related to providing unregistered Investment Advisory service by Garuda Finance.

The Noticee, being a SEBI registered Investment Adviser had duly followed all the requisite compliances such as doing KYC and Risk Profiling of clients, maintaining client records, displaying complaint details on the website and collecting advisory fees in line with the IA Regulations.

The Noticee contended that if his intention was to carry out unregistered investment advisory activities, then he would not have mentioned SEBI registration number on the website, would not have ensured compliance with norms and would not resolve SCORES portal complaints, rather would have engaged in fraudulent and unethical activity. Further, the firm Garuda Finance had been dissolved as on date.

The Noticee further contended that unregistered investment advisory refers to providing investment advice by a person without obtaining a valid SEBI registration, however, in the case of Garuda Finance, the Noticee was holding a valid registration certificate issued by SEBI. SEBI in its order dated November 22, 2022 in the matter of *Chetan Kalubhai Dhokiya* (where an individual IA had collected fees from clients in the bank account of a separate corporate entity) had considered that the Individual was a SEBI-registered IA and had not construed the investment advisory activity as unregistered and had not directed a refund of fees collected.

20. The Noticee also submitted that the recommendation of the DA for not taking any action against the Noticee was justified in view of the facts and circumstances of the case and pleaded that no action be taken against him.

Consideration of issues and findings

21. I have perused the SCN issued by the DA, the Enquiry Report, the post-Enquiry SCN, the Supplementary SCN, the submissions of the Noticee in replies filed by him and during the personal hearings, and other material

available on record, and it is appropriate at this stage to enumerate the relevant statutory provisions as hereunder:

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:*

SEBI (Intermediaries) Regulations, 2008

Cancellation or suspension of registration and other actions.

23. *Where any person who has been granted a certificate of registration under the Act or regulations made thereunder, –*

(a) fails to comply with any conditions subject to which a certificate of registration has been granted to him;

(b) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;

the Board may, without prejudice to any action under the securities laws or directions, instructions or circulars issued thereunder, by order take such action in the manner provided under these regulations.

Recommendation of action

26. (1) *After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures,–*

(i) disposing of the proceedings without any adverse action;

(ii) cancellation of the certificate of registration;

- (iii) suspension of the certificate of registration for a specified period;*
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;*
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;*
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;*
- (vii) issuance of a regulatory censure to the noticee:*

Order

27.(1) *On receipt of the report containing the measures recommended by the designated authority, the competent authority shall cause to forward a copy of the report submitted by the designated authority and call upon the noticee to make its submission, in writing, as to why the measures recommended by the designated authority or any other action as contemplated in these regulations, should not be taken.*

SEBI (Investment Advisors) Regulations, 2013

Definitions.

2. (1) *In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,—*

...

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

...

(m) “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 a part-time investment adviser or any person who holds out himself as an investment adviser, by whatever name called;

Conditions of Certificate

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

(a) the investment adviser shall abide by the provisions of the Act and these regulations;

(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted.

General responsibility

15 (1).....

(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

THIRD SCHEDULE

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.

5. Information to its clients

An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

8. Compliance

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

22. In light of the foregoing statutory provisions and appreciation of the material on record, I now proceed to deal with the allegations levelled against the Noticee in the subsequent paragraphs.

Allegation 1: Non-updation and non-submission of material information

23. During the course of inspection of the Noticee, it was observed that during FY 2019-20, the Noticee changed his address as mentioned at the time of registration with SEBI (viz., Property No. 1318, JP Nagar 2nd Phase, Bangalore, Karnataka, 560078) to a new address, however, the change of address was not intimated to SEBI until February 25, 2021 and even then, the requisite documentary proof for the same was not furnished. The Report of the Compliance Audit of the Noticee dated August 4, 2021 also observed that the Noticee changed his address during FY 2019-20, however the same was not intimated to SEBI. Further, the Noticee himself, vide email dated January 19, 2022 to SEBI, admitted that he had changed his address during FY 2019-20, however, could not intimate SEBI as he was unaware of the said compliance requirement. Accordingly, it was alleged in the post-Enquiry SCN that the Noticee violated the provisions of regulation 13(b) read with regulation 13(a) of IA Regulations, and clause 1 and 8 of the 'Code of Conduct for Investment Adviser' as laid down in the Third Schedule to the IA Regulations read with regulation 15(9) of IA Regulations.

24. However, the Noticee vide his replies to SEBI contested this allegation on the preliminary ground that there was no clarity regarding the term 'material change' mentioned in the IA Regulations as the same was not defined thereunder and thus, the same should be interpreted in light of the prevailing circumstances. He further contended that no timeline was specified by SEBI for updating a material change in the information submitted earlier and that he intimated the change in address to SEBI on February 25, 2021, well before the before the Compliance Audit Report. He also claimed that he could not submit the documentary proof for change of address as there was no option on the SI Portal for submitting the same. The

Noticee also submitted that by not updating the change in address, none of the investors/clients were aggrieved as communication was not broken with them in any manner since he was always available on calls and emails and promptly responded to all queries of clients.

25. In respect of the preliminary ground raised by the Noticee regarding the definition of the term 'material change', I deem it appropriate to reproduce the relevant provision of the IA Regulations dealing with material change in the information submitted earlier as under:

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

(a) the investment adviser shall abide by the provisions of the Act and these regulations;

(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted.”

26. In this regard, I note that registered address of an IA provides a means to the investors/ clients to physically reach out to the IA especially in case of any queries/ grievances and non-updation of the address details may jeopardise the interest of clients. Moreover, from a regulatory perspective also, updation of address by an IA is significant, *inter alia*, for the purpose of conducting inspection by SEBI of the books of accounts, records and documents of the IA which would be available at the business premises of the IA. Thus, the address of an IA serves an important purpose of maintaining the interface between the IA and the client, and between the IA and SEBI and thus, goes to the root of the business of the IA and accordingly, I find that the change in address of an IA is a 'material change' which ought to be informed forthwith to SEBI in writing in terms of regulation 13(b) of IA Regulations.

27. As regards the contention of the Noticee that no timeline has been specified by SEBI within which the information has to be updated, I note, at the outset, that even though the Noticee submitted an application on the SEBI Intermediaries Portal on February 25, 2021 for intimating the change in address, on account of failure to furnish the requisite documentary proof in support of the same, he has not,

technically, updated his address till date and his contention that there is no option of submitting a documentary proof on the SI Portal is without merit. Further, I note that no evidence was produced by the Noticee to show that even the clients of the Noticee were informed of the change in address.

28. Without prejudice to the above finding about non-updation of change of address by the Noticee till date, I note that even the intimation by the Noticee to SEBI regarding change of address on February 25, 2021 was unduly delayed and does not meet the rigors of the language of regulation 13(b) of IA Regulations which, *inter alia*, reads “the investment adviser shall forthwith inform the Board in writing... if there is any material change in the information already submitted”. Even though the provision does not admit of a clear timeline within which the material change has to be informed, I note that the word “forthwith” is generally considered to be synonymous with the word “immediately” and I refer to a recent judgment of the Hon’ble Supreme Court dated May 13, 2024 in the matter of *Shento Varghese vs. Julfikar Husen & Ors.* (Criminal Appeal No. 2531-2532 of 2024) wherein the Court, while referring to earlier judgments, *inter alia*, held as follows:

“20. This Court, in *Rao Mahmood Ahmad Khan v. Ranbir Singh*, has held that the word ‘forthwith’ is synonymous with the word immediately, which means with all reasonable quickness. When a statute requires something to be done ‘forthwith’ or ‘immediately’ or even ‘instantly’, it should probably be understood as allowing a reasonable time for doing it.

21. The expression ‘forthwith’ has been defined in *Black’s Law Dictionary*, 10th Edition as under:

“forthwith, adv. (14c) 1. Immediately; without delay. 2. Directly; promptly; within a reasonable time under the circumstances; with all convenient dispatch”

...

22. From the discussion made above, it would emerge that the expression ‘forthwith’ means ‘as soon as may be’, ‘with reasonable speed and expedition’, ‘with a sense of urgency’, and ‘without any unnecessary delay’. In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.”

29. Thus, from the aforesaid judicial interpretation, it is clear that the word 'forthwith' would signify doing something promptly and without unnecessary delay. In light of the same, I find that the intimation to SEBI on February 25, 2021 for the change in address effected in FY 2019-20 can by no stretch of imagination be termed as 'forthwith' and the bare contention of the Noticee that none of the investors were aggrieved as communication with them was not broken in any manner is of no avail to the Noticee in light of the clear language of regulation 13(b) of IA Regulations.
30. Further, the Noticee himself, vide email dated January 19, 2022 to SEBI, admitted that he had changed his address during FY 2019-20, however, could not intimate SEBI as he was unaware of the said compliance requirement. Since ignorance of the law is no excuse, in view of the aforesaid discussion, I concur with the finding of the DA that the allegation of non-updation and non-submission of material information by the Noticee stands established and thus, the Noticee has violated the provisions of regulation 13(b) read with regulation 13(a) of IA Regulations, and clause 1 and 8 of the 'Code of Conduct for Investment Adviser' as laid down in the Third Schedule to the IA Regulations read with regulation 15(9) of IA Regulations.
31. At this juncture, I note that the DA in his Enquiry Report was of the view that this was not a fit case for recommending cancellation of registration of the Noticee as in the view of DA, violation regarding non-updation of change of address was technical in nature. I also note that no complaint has been received from any client on this account and no serious harm has been caused to anyone, and therefore, I agree with the DA that the violation is technical in nature and I am inclined to grant benefit to the Noticee.

Allegation 2: Unregistered investment advisory activities through F3 Financials

32. SEBI received a complaint against F3 Financials on June 25, 2019 alleging that F3 Financials was carrying on investment advisory activity through the website www.f3financials.com without obtaining SEBI registration and though the complainant had transferred an amount of Rs. 30,000/- in the ICICI bank account of F3 Financials to receive advisory service, no service was provided.
33. During the course of inspection of the Noticee, it was observed that the Noticee was the proprietor of F3 Financials which was involved in providing investment

advice. F3 Financials was incorporated on February 05, 2019, i.e., prior to the Noticee obtaining registration from SEBI as an individual Investment Adviser on April 23, 2019. It was also observed that F3 Financials was not registered with SEBI in any capacity. Further, the fact of carrying on unregistered investment advisory activities through F3 Financials was neither disclosed by the Noticee to SEBI during pendency of his application for registration nor after obtaining registration.

34. Upon perusal of the KYC documents of the aforesaid ICICI bank account, it was observed that the bank account was opened in the name of F3 Financials on February 8, 2019 and the KYC was signed by its proprietor, Sumit Kumar Waghmare, who was the authorised signatory and beneficiary of the account. The account was opened by depositing a cheque of Rs. 25,000/- drawn on the HDFC account of SKW. As per the GST Registration Certificate, F3 Financials was incorporated on February 5, 2019 and SKW was its proprietor.
35. Further, as per the bank account statement obtained from ICICI Bank in respect of the ICICI bank account of F3 Financials, it was observed that an amount of Rs. 2,27,12,610/- spread across a total of 565 credits was received in the account in the period between February 12, 2019 and November 4, 2019. This also included the amount of Rs. 30,000/- alleged by the complainant to have been transferred in F3 Financials' bank account *in lieu* of advisory services. In this regard, the appearance of certain terms such as investment, stock consult, share related, trading, share market, trading fees, share fees, intraday broker, package register, fee for F3, HNI package, intraday tips, MIB for advisor, share tip fee, trading service, etc., in the narration of many credit transactions in the ICICI bank account indicated that the bank account was used for receiving fees related to investment advisory activities. Accordingly, a total of 47 credit transactions during the period between February 19, 2019 and June 19, 2019 amounting to Rs. 10,91,212/- were *prima facie* identified as fees collected by F3 Financials towards investment advisory activities. In addition, the Noticee included the income earned by F3 Financials in his own income in the Income Tax Return filed by him for FY 2019-20.
36. Accordingly, it was alleged in the post-Enquiry SCN that the Noticee had provided 'investment advice' as defined under regulation 2(1)(l) of the IA Regulations and

engaged in the activities of an 'investment adviser' as defined under regulation 2(1)(m) of the IA Regulations through F3 Financials, an unregistered investment advisor and by failing to update SEBI about the said unregistered investment advisory activity during pendency of his registration application and post grant of registration, the Noticee allegedly violated the provisions of regulation 13(b) of IA Regulations read with regulation 13(a) of IA Regulations, and clause 1, 5 and 8 of the 'Code of Conduct for Investment Adviser' as laid down in the Third Schedule to the IA Regulations read with regulation 15(9) of IA Regulations.

37. In this regard, the Noticee has claimed that he was a victim of fraud as his former employers had misused his registration as narrated in earlier paragraphs. However, it is noted that the income earned by F3 Financials was mentioned in Noticee's Income Tax Return (ITR) for FY 2019-20.

38. The Noticee has also tried to demonstrate the fraud committed on him by furnishing copies of the police complaint dated March 18, 2021 filed by him in the police station and the private complaint dated October 25, 2021 filed by him before the Addl. Chief Metropolitan Magistrate, Bangalore against Mr. Dipak Kumar Baid and Mr. Hemanth Kumar.

39. From a perusal of the aforesaid submissions of the Noticee, I note, at the outset, that the Noticee has admitted/ not contested certain facts, viz., that the bank account of F3 Financials was opened using the KYC documents of the Noticee and he was the authorised signatory and beneficiary of the bank account; that F3 Financials, without being registered with SEBI in any capacity, was providing investment advisory services from February 2019 to June 2019 and thus, even prior to the Noticee being granted registration in individual capacity by SEBI in April 2019; that the Noticee, during pendency of his application for SEBI registration or even subsequent to grant of registration, did not update SEBI regarding investment advisory services being provided through F3 Financials; and F3 Financials earned Rs. 10,91,212/- from investment advisory activity during February 2019 to June 2019 and this amount was included by the Noticee in his own income as stated above.

40. In view of the same, the only issue that survives for my consideration is whether the Noticee was defrauded by Mr. Dipak Kumar Baid and Mr. Hemanth Kumar who were carrying on the activities of F3 Financials in his name and the Noticee was

not involved in the same in any manner. In support of this argument, the Noticee furnished copies of the police complaint and the private complaint before the Addl. Chief Metropolitan Magistrate, Bangalore. In this regard, it is pertinent to note that vide letter dated October 3, 2019, SEBI advised the Noticee to submit the details of activities carried out by F3 Financials, however, no reply to the said letter was received by SEBI. The Noticee, being the proprietor of F3 Financials, was then called to SEBI's Bangalore Local Office on February 7, 2020 where the aforesaid letter was hand delivered to him. Even after the said communication, the Noticee failed to file a reply. Thereafter, vide a reminder letter dated March 1, 2021, the Noticee was again advised by SEBI to submit the information sought vide letter dated October 3, 2019. In response the Noticee vide email dated March 31, 2021, *inter alia*, submitted that his name had been fraudulently used in F3 Financials by Mr. Dipak Kumar Baid and that he had filed a police complaint in this regard. Almost an year later, vide email dated March 5, 2022, the Noticee submitted the copy of police complaint and private complaint.

41. From the chronology of events as stated above, it is clear that the Noticee filed the police complaint in March 2021, more than a year after hand delivery of SEBI's letter seeking details of activities carried out by F3 Financials in January 2020 and close on the heels of the reminder letter sent by SEBI on March 1, 2021. Thus, it appears that filing of the police complaint and the subsequent private complaint by the Noticee to raise the bogey of fraud committed on him were an afterthought in order to evade submission of details sought by SEBI as well as any possible enforcement action for carrying out unregistered investment advisory activities.
42. Further, as per the details available on the 'Ecourts Services' website, the private complaint before the Addl. Chief Metropolitan Magistrate (Case No. PCR/0019278/2021) was referred to the police for investigation in June 2022. The police investigated the matter and filed a closure report in June 2024. The Noticee's counsel sought time till August 2024 to file objections to the said closure report. However, the objection was not filed by the Noticee till the last date of hearing on March 1, 2025 wherein his counsel sought further time to file the same and the Hon'ble Court granted him time till May 15, 2025 in this regard. The fact that police investigations could not reveal the alleged fraud committed by the ex-employers of the Noticee as claimed by him resulted in filing of a closure report by the police

before the Hon'ble Court. Further, it is also pertinent to note the conduct of the Noticee after filing of the closure report by police before the Hon'ble Court:

(a) the Noticee concealed the fact that the police had filed a closure report in August 2024 on his private complaint, even though he appeared before me for hearing on February 27, 2025;

(b) The Noticee did not file Objections to the said closure report filed by police till the last hearing before Hon'ble Court in March 2025.

43. In view of the facts narrated hereinbefore, especially that the Noticee was the proprietor of F3 Financials and the authorised signatory as well as the beneficiary of the bank account of F3 Financials; the narrations in several credit entries in the bank account of F3 Financials contained terms such as investment, stock consult, share related, trading, share market, trading fees, share fees, intraday broker, package register, fee for F3, HNI package, intraday tips, MIB for advisor, share tip fee, trading service, etc.; amount transferred by the complainant to F3 Financials' bank account was appearing in the bank account statement; and the Noticee declared the income of F3 Financials in his own Income Tax Return, I find that the Noticee, through F3 Financials, was engaged in the business of providing advice relating to investing in, purchasing, selling or otherwise dealing in securities in lieu of consideration. Thus, I find that the Noticee had provided 'investment advice' as defined under regulation 2(1)(l) of the IA Regulations and engaged in the activities of an 'investment adviser' as defined under regulation 2(1)(m) of the IA Regulations through F3 Financials, an unregistered investment advisor.

44. Further, I find that the grounds raised by the Noticee to contend that he was not involved in unregistered investment advisory activities through F3 Financials, viz., handwriting of particulars on the account opening cheque not matching with the handwriting of signature, and the website of F3 Financials as well as the complaints received against F3 Financials not mentioning his name, or the address of SEBI's letter being allegedly used by Mr. Dipak Kumar Baid for operating other unregistered firms, to be flimsy and of no avail to the Noticee.

45. I further note that the charge levelled against the Noticee in the instant Enquiry proceedings is of having failed to inform SEBI of carrying on unregistered investment advisory activities through F3 Financials and in view of the aforesaid findings, I have no hesitation in concurring with the DA's observations that the

Noticee failed to disclose to SEBI that he was involved in carrying out unregistered investment advisory activities through F3 Financials and thus, violated the provisions of regulation 13(b) read with regulation 13(a) of IA Regulations, and clause 1, 5 and 8 of the 'Code of Conduct for Investment Adviser' as laid down in the Third Schedule to the IA Regulations read with regulation 15(9) of IA Regulations.

46. It is curious to note that the noticee was giving investment advice through F3 Financials during pendency of his application for registration which is a serious concern. It is assumed that a person who applies for grant of registration as an IA is aware of conditions for grant of registration such as certification requirement, networth requirement, 'fit and proper' criteria, etc. However, by engaging in investment advisory services prior to grant of registration certificate, the Noticee has shown scant regard for applicable regulations.

47. At this juncture, I note that the DA in his Enquiry Report was of the view that this is not a fit case for recommending cancellation of registration of the Noticee as an IA in view of the police complaint being filed by the Noticee against his ex-employers for misusing his KYC details for undertaking unregistered investment advisory activities through F3 Financials. However, as earlier noted at para 40, the filing of police complaint appears to be an afterthought and merely a ruse to evade submission of details sought by SEBI as well as any possible enforcement action for carrying out unregistered investment advisory activity. Therefore, I do not agree with the views of the DA in this regard.

Allegation 3: Unregistered investment advisory activities through Garuda Finance

48. SEBI received a complaint against Garuda Finance on October 24, 2020 and November 19, 2020 alleging a payment of Rs. 41,300/- to Garuda Finance but receiving advisory services for only 3 days. The complainant, *inter alia*, informed that Garuda Finance was the SEBI registered Investment Adviser having registration number as INA200001512. However, as per SEBI website, the said registration number belongs to one Capitalvia Global Research Ltd. (CGRL). The complaint was taken up with CGRL which informed SEBI vide email dated March 2, 2022 that Garuda Finance had misused its registration and a complaint was filed

with the police. CGRL also informed that the website <https://www.garudafinance.com> belonged to the Noticee and that the website is now known as <https://skwinvestmentadviser.com>.

49. During the course of inspection of the Noticee, it was observed that the Noticee, after getting registered with SEBI as an Investment Adviser in individual capacity, was involved in providing investment advice through Garuda Finance, a partnership firm registered in Karnataka on July 5, 2019, and which was not registered with SEBI in any capacity. As per the partnership deed executed on July 1, 2019, the Noticee and one Mr. Prateek Gupta were partners of Garuda Finance with 50:50 profit sharing. The KYC for bank accounts of Garuda Finance was signed by both the Noticee and Mr. Prateek Gupta and they were the authorised signatories as well as the beneficiaries of the bank accounts.
50. The partnership deed dated July 1, 2019, *inter alia*, mentioned that “*the business of the partnership shall be the stock market advisory, financial advisory, consultancy in the field of Finance & Portfolio management and any other similar activity of advisory services*”. It was observed from the cached pages of the website of Garuda Finance (<https://www.garudafinance.com>) that various packages for investment advisory were offered by Garuda Finance. Further, the website mentioned the modes of payment for advisory services, viz., in bank accounts maintained with Yes Bank, HDFC Bank and Axis Bank, and Payment Gateway offered by Paytm and Razorpay.
51. As per information received from the Noticee vide email dated March 28, 2022, it was observed that Garuda Finance collected an amount of Rs. 2,51,16,455/- during the period July 15, 2019 to February 28, 2021 in lieu of investment advisory activities.
52. It was observed that the website of Garuda Finance mentioned the details of SEBI registration granted to the Noticee in individual capacity. It was also observed that the client agreements, bank accounts in which fees were received, etc., were in the name of Garuda Finance and the investment advisory activities were carried out in the name of Garuda Finance which was an unregistered entity. Further, it was noted that all the complaints lodged against the Noticee were in respect of services provided by Garuda Finance, thereby demonstrating that Garuda Finance misled its clients that it was registered with SEBI.

53. Accordingly, it was alleged in the post-Enquiry SCN that Garuda Finance had provided 'investment advice' as defined under regulation 2(1)(l) of the IA Regulations and engaged in the activities of an 'investment adviser' as defined under regulation 2(1)(m) of the IA Regulations without obtaining registration from SEBI.
54. In this regard, the post-Enquiry SCN alleged that by virtue of section 27 of the SEBI Act, 1992, the Noticee, being one of the partners of Garuda Finance, was liable for the contraventions committed by Garuda Finance, viz., carrying on activities of an Investment Advisor without obtaining SEBI registration. Accordingly, by failing to update SEBI about carrying on unregistered investment advisory activity through Garuda Finance, the Noticee allegedly violated the provisions of regulation 13(b) of IA Regulations read with regulation 13(a) of IA Regulations, and clause 1, 5 and 8 of the 'Code of Conduct for Investment Adviser' as laid down in the Third Schedule to the IA Regulations read with regulation 15(9) of IA Regulations.
55. However, the Noticee argued that the investment advisory services provided through Garuda Finance should not be construed as unregistered since 'Garuda Finance' was only a trade/ brand name used by the Noticee and the activities of the firm were solely under his control and were started in July 2019, i.e., post the Noticee's registration with SEBI. He further contended that SEBI registration number was clearly mentioned in every client communication, viz., welcome mail, client agreement, website, etc. and every client was aware of the fact that the Noticee was the person behind Garuda Finance. He submitted that a brand name was used by him as the same builds trust and is useful for attracting prospective clients. The Noticee even claimed that he was disclosing his registration details along with the brand name even before the implementation of SEBI's Circular dated April 6, 2023 dealing with usage of brand name/trade name by Investment Advisers and Research Analysts.
56. The Noticee also submitted that Mr. Prateek Gupta was just an investor in the business and for the sake of transparency, an MoU was entered into between them which clearly stated that Mr. Prateek Gupta would not be involved in business activities and all financial activities and business operations would be managed by the Noticee. The MoU further stated that Mr. Prateek Gupta would only have

access to books of accounts and shall not use the license of the Noticee, thereby highlighting that the Noticee was handling the business individually.

57. The Noticee also claimed that since Mr. Prateek Gupta, being an investor, wanted access to financials and bank accounts, the Noticee decided to open a joint account. However, the Banks insisted that a joint account could be opened only if a partnership was formed between the Noticee and Mr. Prateek Gupta (hereinafter referred to as “**partners**”) and therefore, the Noticee entered into a partnership deed. Both the partners signed the KYC of all Bank accounts and had access to the said accounts.
58. The Noticee further submitted that the partnership deed was later modified to change the profit sharing ratio between the Noticee and Mr. Prateek Gupta to 99:1, indicating thereby that the Noticee was the sole owner of Garuda Finance.
59. The Noticee asserted that displaying his registration number on the website of Garuda Finance was not to mislead investors but for complying with SEBI’s regulations by making clients aware that the website was owned and managed by the Noticee who was a SEBI registered Investment Adviser. He has further argued this enabled his clients to file SCORES complaints and did not harm their interests.
60. From a perusal of the submissions of the Noticee and other material available on record, I note that Garuda Finance was not just a trade/ brand name as contended by the Noticee but was a partnership firm which was engaged in providing investment advice to its clients, without a SEBI registration as an Investment Adviser. The Noticee has also admitted the same by furnishing to SEBI the details of fees collected by Garuda Finance towards investment advisory service for the period FY 20 to FY 21. In this regard, the Noticee’s submissions in furtherance of his claim that he was the sole owner of the business (viz., that the MoU between the Noticee and the investor in his business, Mr. Prateek Gupta clearly mentioned that all financial activities and business operations would be managed solely by the Noticee, and that the profit sharing ratio in the partnership was modified to apportion 99% profits to the Noticee) are of little effect since the investment advice was ultimately being rendered under the banner of a partnership firm, Garuda Finance without the firm having a SEBI registration. I note that profit sharing ratio and sole control of business is immaterial in the instant case as an individual

registered with SEBI as an IA simply does not have the liberty to provide investment advice through an unregistered partnership firm.

61. In order to substantiate the said view, reference is drawn to regulations 6, 7 and 8 thereof of IA Regulations, which provide for distinct eligibility criteria for non-individuals (including partnership firms) vis-à-vis individuals for obtaining registration from SEBI as an IA, viz., certification requirement, networth requirement, 'fit and proper' criteria, etc. For ease of reference, a few examples of the said distinction inherent in the IA Regulations are as under:

- (a) in terms of regulation 6 of IA Regulations, in case an applicant is a firm, the qualification and certification requirement are required to be fulfilled by not just the principal officer of the firm but also by all persons associated with investment advice;
- (b) in terms of regulation 6 of IA Regulations, the 'fit and proper' person criteria as laid down in the Schedule II of the SEBI Intermediaries Regulations is required to be fulfilled by the partners, principal officer and persons associated with investment advice, in addition to the applicant firm;
- (c) In terms of regulation 8 of IA Regulations, the networth requirement for non-individuals (Rupees Fifty Lakh) is quite different from the networth requirement for individuals (Rupees Five Lakh).

62. Such statutory distinction in the framework of IA Regulations clearly demonstrates the intent of SEBI to treat individuals and non-individuals on a different plane for the purpose of the IA Regulations. The Noticee, by implicitly contending that he is also entitled to carry on investment advisory services through a partnership firm while he was holding SEBI's registration as an individual IA, has tried to circumvent the eligibility criteria laid down for partnership firms for registration as an IA. Allowing an IA registered with SEBI in individual capacity to carry out investment advisory activity through a partnership firm without the firm itself getting registered with SEBI would lead to blurring the distinction between an individual IA and a non-individual IA as contemplated in the IA Regulations and thus, it would make the unambiguous language of relevant provisions of the IA Regulations redundant. Therefore, I am inclined to repel the argument of the Noticee that investment advisory services provided by him through Garuda Finance should not be treated as unregistered investment advisory activity. Accordingly, I find that the Noticee,

through Garuda Finance, was engaged in the business of providing advice relating to investing in, purchasing, selling or otherwise dealing in securities in lieu of consideration. Thus, I find that the Noticee had provided 'investment advice' as defined under regulation 2(1)(l) of the IA Regulations and engaged in the activities of an 'investment adviser' as defined under regulation 2(1)(m) of the IA Regulations through Garuda Finance, an unregistered investment advisor.

63. Nevertheless, as regards the Noticee's claim that his SEBI registration number was clearly mentioned in every client communication and every client was aware of the fact that the Noticee was the person behind Garuda Finance, it is pertinent to refer to a sample service agreement email sent by Garuda Finance to one of its clients as below:

GARUDA FINANCE
For Your Success

Greetings from Garuda Finance (Investment Advisor)

Dear Kishore HR,

With regards to the service confirmation and acceptance received over the phone from your side, we would like to thank you for your association with Garuda Finance (Investment Advisor) and making yourself available for the telephonic conversation and furnishing the requisite details in reference to your subscription with us.

You agreed to below details:

Client Name	
Contact Number	
Email Id	
Pan Number	
Date of Birth	
Service Charge	35000 + 18% GST = 41300
Amount Paid (Including Tax)	41300
Remaining Amount	00
Service Name	Equity Cash FNI
Service Term	45 Days
Start Date	2023-07-01
End Date	2023-08-14
Trading Strategies Awareness	NORMAL AWARENESS
Minimum Investment Requirement	100000

Address

You agreed to follow below mention trading principles: <https://www.garudafinance.com/research/> strictly during your entire service tenure, as investment is subject to market risk. You also agreed on all the T&C as we do not offer any assured or guaranteed returns on our services or products and we do not have any refund policy. We strongly suggest you to please go through disclaimer of Garuda Finance (Investment Advisor) <https://www.garudafinance.com/terms-and-conditions/> for your reference.

Know Your Customer (KYC) and Risk Profiling Information is a mandatory formality for providing the services and same we have received with your confirmation done over the phone. Garuda Finance (Investment Advisor) will consider these details to be final and would take this as a basis for all our services and products offered to you. Garuda Finance (Investment Advisor) is not liable for any previous losses and services in any case.

We request you to kindly take note of the above said policy and enjoy trading with us.

Post agreement on all above information if you feel to propose any correction you can get back to us within 3 days.

Note:
Non-receipt of your response over this mail within stipulated time frame of 3 days will be considered as no correction solicited and will be used for further records of organization.
Looking for a long-term association with you.

<https://mail.google.com/mail/u/0/?ui=2&ik=31b2d8&view=pt&search=all&permthid=feed-f63a167091577300232048&siml=msg-f63a167091577360...>

Gmail - Service Agreement - Garuda Finance

Happy Trading!
Garuda Finance-SEBI registered (Individual Advisor) | Basic Tips | Community & Power Tips
Email : info@garudafinance.com | Phone : +91 86500 90905 | SEBI Registration : IN200810099

As you are trading, you should be at risk. The risk of loss in trading in any financial markets or exchange can be substantial. It is not a guarantee of profit or loss. You should understand the risks involved in trading and you should not invest more than you can afford to lose. Garuda Finance does not guarantee future performance. Past performance does not guarantee future performance. Garuda Finance does not guarantee returns in any of its products or services. Garuda Finance is not liable for any losses in any case. Investment in a market is subject to market risk.

As is evident from the contents of the email, I note that the email does not mention the name of the Noticee at all and only in the salutation part of the email, a passing reference is made to the effect that Garuda Finance is “SEBI registered (Individual Advisor)”, again without actually mentioning the name of the Noticee. Thus, it is quite possible that some of the clients might have been misled from the tenor of the service agreement email that Garuda Finance is in fact registered with SEBI. Further, the mere assertion by the Noticee that since all complaints in respect of services rendered by Garuda Finance were actually registered against him in the SEBI SCORES, and thus, clients were aware of the actual Investment Adviser, cannot be accepted since complaints were filed against the Noticee only for the reason that his registration number was mentioned in correspondences of Garuda Finance with the clients. Even if the assertion of the Noticee is accepted at face value, it would also, at the most, lead to the inference that only those clients came to know of the actual Investment Adviser who filed a SCORES complaint when they entered the registration number of the IA. Accordingly, I am not able to accept the contention of the Noticee that every client was aware of the fact that he was the person behind Garuda Finance.

64. Further, the claim of the Noticee that all the complaints on SCORES portal related to clients’ dissatisfaction with the services rather than for providing unregistered investment advisory services provided by Garuda Finance does not in any way aid the Noticee since I have already arrived at the conclusion that unregistered investment advisory services were being provided through Garuda Finance and absence of any complaint by investors on that account is immaterial.
65. The claim of the Noticee that he has been purportedly following the 2023 SEBI Circular on the usage of brand name/trade name by Investment Advisers and Research Analysts is of no avail to the Noticee in the instant case since the charge levelled against the Noticee pertains to the time period (July 2019 to February 2021) prior to the Circular coming into force and in any case, the Noticee was actually carrying on the business through a partnership firm and Garuda Finance was not just a trade/brand name. However, for the sake of argument, even if I have to grant him the benefit of the said circular, as per the said circular, the clients of Garuda Finance must know that SKW is the person behind it since it is incumbent upon an IA using a trade/brand name to prominently display their name, registration

number and complete address on their portal/website, advertisements, client agreements, etc., which unfortunately was not the case here as only the clients who filed a SCORES complaint could learn his identity.

66. Furthermore, I am not inclined to view favourably the contention of the Noticee that he was being faulted merely for receiving fees from clients in the bank accounts of Garuda Finance instead of his own account. In support of this argument, the Noticee has also relied upon SEBI's order dated November 22, 2022 in the matter of *Mr. Chetan Kalubhai Dhokiya ("Dhokiya")* wherein an individual IA had collected fees from his clients in a separate corporate account and SEBI, while considering that the individual was registered with SEBI as an IA, did not construe that the individual had carried on unregistered investment advisory activities and consequently, did not direct refund of fees collected. However, I note that the Dhokiya case is distinguishable from the instant case since in the Dhokiya case, even though, the individual IA had received advisory fees in the name of a company of which he was the co-owner, the said company itself had filed an application with SEBI for registration as an IA and the fees was received during the pendency of the said application. Accordingly, in the Dhokiya case, the SEBI's order held that ultimately the intention of the individual IA was to register his company also as an IA. However, the facts obtaining in the instant matter are starkly different since the Noticee had no intention whatsoever to get his partnership firm, Garuda Finance registered with SEBI and Dhokiya was not providing investment advise hiding behind a partnership firm. Thus, I find that the reliance placed by the Noticee on the Dhokiya order is misplaced.

67. Further, as regards the incorrect SEBI registration number mentioned by Garuda Finance in one of the client agreements, I note that the Noticee has admitted that the same was an unintentional typographical mistake and that no such issue was found in other client agreements inspected by SEBI. Since the Noticee has not been charged for misrepresentation, I am not dealing with this issue in the instant order.

68. In view of the foregoing discussions, I agree with the conclusion of the DA that the Noticee was involved in providing unregistered investment advisory activities through his partnership firm, Garuda Finance and failed to update SEBI regarding the same and thus, has violated the provisions of regulation 13(b) read with

regulation 13(a) of IA Regulations, and clause 1, 5 and 8 of the 'Code of Conduct for Investment Adviser' as laid down in the Third Schedule to the IA Regulations read with regulation 15(9) of IA Regulations.

69. At this juncture, I note that the DA in his Enquiry Report was of the view that this not a fit case for recommending cancellation of registration of the Noticee as an IA in view of the Noticee ceasing of the activities of Garuda Finance, refunding the fees collected to the complainants and resolving all complaints filed by clients. I agree that these factors are indeed mitigating in nature, however, I also note that the Noticee was providing investment advisory activities through an unregistered firm even prior to obtaining registration from SEBI in his individual capacity. Further, the Noticee was involved in providing unregistered investment advisory activities for more than 2 years through multiple entities, firstly through F3 Financials from February 2019 to June 2019 and immediately thereafter, through Garuda Finance from July 2019 to March 2021. I deem these instances to be aggravating enough while dealing with the Noticee's infractions and therefore, I do not agree with the views of the DA in this regard.

Conclusion

70. In view of the aforesaid discussion, I note that the Noticee violated the provisions of regulation 13(b) read with regulation 13(a) of IA Regulations, and clause 1, 5 and 8 of the 'Code of Conduct for Investment Adviser' as laid down in the Third Schedule to the IA Regulations read with regulation 15(9) of IA Regulations.

71. Further, in light of the attending facts and circumstances, I do not concur with the recommendation of the DA and deem it fit that suspension of registration of the Noticee as an IA for a period of six months would be commensurate with the violations committed by the Noticee as the violations are grave enough to not be condoned lightly.

Order

72. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 12(3) and 19 of the SEBI Act read with regulation 27(5) of Intermediaries Regulations, hereby suspend the certificate of registration granted to the Noticee,

Mr. Sumit Kumar Waghmare (SEBI Registration No. **INA200013099**) for a period of six months.

73. The Order shall come into force with the immediate effect.

74. A copy of this order shall be forwarded to Mr. Sumit Kumar Waghmare.

DATE: MARCH 26, 2025

PLACE: MUMBAI

**ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**