

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA  
CORAM: S. K. MOHANTY, WHOLE TIME MEMBER**

**ORDER**

**UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF CAPITAL NIVESH RESEARCH AND BRIGHT MONEY SOLUTIONS**

**In respect of:**

Sr. No.	Name of the Noticee	PAN
1.	Capital Nivesh Research and its Proprietor Mr. Naresh Nimawat	AUMPN9148A
2.	Bright Money Solutions and its Proprietor Mr. Naresh Nimawat	AUMPN9148A
3.	Mr. Ashwin Doriya	GMMPD6808M

**Background**

1. The present proceedings have originated from an *ex-parte ad-interim* order dated December 17, 2020 (for convenience "*interim order*") passed by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") under Sections 11, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "*SEBI Act, 1992*") against Capital Nivesh Research (for convenience "*CNR*"), its sole proprietor Mr. Naresh Nimawat (for convenience "*Naresh*"), (hereinafter collectively referred to as "*Noticee no. 1*"), Bright Money Solutions (for convenience "*BMS*"), its sole proprietor *Naresh* (hereinafter collectively referred to as "*Noticee no. 2*"), and **Mr. Ashwin Doriya** (for convenience "*Ashwin / Noticee no. 3*") since the unregistered investment advisory activities of these *Noticees* were

*prime facia* found to be in violation of the provisions of Section 12(1) of the *SEBI Act, 1992* read with regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "*IA Regulations, 2013*"). Further, the *interim order* also alleges the above activities of the *Notices* to be fraudulent and manipulative and in violation of provisions of Section 12A (a), (b) & (c) of the *SEBI Act, 1992* and regulations 3 (a) (b), (c) & (d) and regulations 4(1) and 4(2)(k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "*PFUTP Regulations, 2003*"). All the aforesaid *Notices i.e. Notices no. 1, 2 and 3* are hereinafter collectively referred to as "*Notices*"),

2. From the materials on record, it is noted that the *interim order* passed in the matter contained the following observations with respect to the activities of the *Notices*:

- i. SEBI received complaints dated October 05, 2019 and December 31, 2019 from complainants Mr. Bankim Bihari and Mr. Sudhakaran T respectively, against CNR and another complaint dated March 16, 2020 from complainant Mr. Shahaji Ukirde against BMS, wherein, *inter alia*, it was alleged that CNR and BMS are collecting money from investors through various investment plans. It was also alleged that they are involved in unregistered investment advisory business.
- ii. It was further gathered that the CNR was hosting a website, viz: [www.capitalnivesh.com](http://www.capitalnivesh.com) which, *inter alia*, proclaimed that "*CAPITAL NIVESH is amongst the most trusted names in the arena of financial services. It is a SEBI (Security and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for the investors protection.*" Similarly, it was observed that the BMS was also hosting a website, viz:- [www.brightmoneysolutions.com](http://www.brightmoneysolutions.com) which, *inter alia*, similarly, proclaimed that "*BM SOLUTIONS is amongst the most trusted*

names in the arena of financial services. It is a SEBI (Security and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for the investors protection.” It was further noticed that both the *Notices no. 1 and 2 (CNR and BMS)* were claiming to be involved in providing tips in Equity (Stocks, Future, Option) & Commodity Segments.

- iii. From the examination of the payment pages of the aforementioned websites, it is observed that *Noticee no. 1 (CNR)* had used bank account number 50200038495361 held with HDFC Bank in the name of its Proprietor, *Naresh* for transacting business related to advisory services including accepting payments from investors. Likewise, from the website of *BMS (Noticee no. 2)*, it is observed that it is also using its bank account number 50200047901917 (wherein the authorised signatory was the proprietor of BMS i.e. *Naresh*) held with HDFC Bank as well as the bank account number 50200015438477 held in the name of *Ashwin (Noticee no. 3)* with Bandhan Bank for accepting payments from the investors.
- iv. From the analysis of the aforementioned bank account statements, it was observed that the total amount mobilized/credited by the *Notices* in the above three bank accounts stood at INR 95,30,047.07/- involving a total of 798 credits deposited during the period April 12, 2019 to December 05, 2020. Examination also revealed that large number of payments were received in the aforementioned account of *Notices* from various investors / clients. Following information was gathered from HDFC bank and Bandhan bank (upto 06/12/2020) with regard to the aforementioned bank accounts:

Account Name (As per the website)	Account Name (As per KYC)	Bank Name	Date of Account Opening	A/c no.	Bank Statement Period	No. of Credit Transaction	Date of last Credit	Total Credit in INR	Closing Balance in INR
Capital Nivesh	Naresh Nimawat	HDFC	12/04/2019	50200038495361	12/04/2019 till 6/12/2020	346	21/07/2020	53,03,779	0
Bright Money Solutions	Bright Money Solutions	HDFC	13/02/2020	50200047901917	13/02/2020 till 6/12/2020	376	12/09/2020	39,82,788	1
BM Solutions	Ashwin Doriya	Bandhan Bank	09/09/2020	50200015438477	09/09/2020 till 05/12/2020	76	05/12/2020	2,43,480	368
<b>Total</b>								<b>95,30,047</b>	<b>369</b>

- v. From the above, it is noticed that the *Notices no. 1 and 2* through their websites held themselves out as SEBI registered Investment Advisors and collected fees from the investors for providing stock recommendations, whereas the examination revealed that such advisory services were rendered without obtaining a registration under *IA Regulations, 2013*.

3. On the basis of the aforesaid observations, the evidence gathered during the examination and considering the nature of the alleged activities undertaken by the *Notices*, it was thought proper to pass an order and issue directions to them as a preventive measure, for protecting the interest of investors in the securities market. Consequently, the following directions were, *inter alia*, issued against the *Notices* in the *interim order*:

- i. *The Notices shall cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders;*

- ii. *The Noticees shall not divert any funds collected from investors, kept in bank account(s) and/or in their custody until further orders;*
- iii. *The Noticees shall not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI;*
- iv. *The Noticees shall immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc., in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders;*
- v. *The Noticees shall not access the securities market and buy, sell or otherwise deal in securities, either directly or indirectly, in any manner whatsoever, until further orders;*
- vi. *The Noticees shall provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order;*
- vii. *The Noticees shall submit the number and details of clients who have availed their investment advisory services and to submit details of fees collected from each such client, immediately but not later than 5 working days from the date of receipt of this order;*
- viii. *HDFC Bank and Bandhan Bank are directed not to permit any debits / withdrawals and not to allow credits, from / to the following bank accounts, without the permission of SEBI. The said Banks are directed to ensure that all the above directions are strictly enforced:*

<i>Sr. No</i>	<i>Name of Bank Account Holder</i>	<i>Bank Acoount Number</i>	<i>Name of the Bank</i>
1	Mr. Naresh Nimawat	50200038495361	HDFC Bank
2	Bright Money Solutions	50200047901917	HDFC Bank
3	Mr. Ashwin Doriya	50200015438477	Bandhan Bank

ix. *The Depositories are directed to ensure, till further direction, that they neither permit any debits nor any credits in the demat accounts held by (a) Mr. Naresh Nimawat either individually or jointly and (b) Mr. Ashwin Doriya either individually or jointly.*

x. *The Registrar and Transfer Agents are directed to ensure, till further directions, that they neither permit any transfer nor redemption of the securities, including Mutual Funds units, held by (a) Capital Nivesh Research, (b) Bright Money Solutions, (c) Mr. Naresh Nimawat either individually or jointly, and (d) Mr. Ashwin Doriya either individually or jointly;*

4. The above stated *interim order* issued to the *Noticees* also intimated to the *Noticees* that the same is to be treated as a Show Cause Notice (hereinafter also referred to “SCN”), whereby the *Noticees* were called upon to show cause as to why the investment advisory services rendered through their websites or otherwise in securities market should not be held as “Investment Advisory Services” in terms of the *IA Regulations, 2013* and thereby the activity of the *Noticees* be not treated as in violation of the SEBI Act and relevant Regulations. Additionally, the *Noticees* were called upon to show cause as to why their act of falsely claiming to be a SEBI registered investment adviser, thereby luring and inducing investors to deal in securities by availing their services, may not be treated as a fraudulent practice/ act/ conduct, in terms of *PFUTP Regulations, 2003*. The *Noticees* were also show caused to explain as to why appropriate directions, under Sections 11, 11(4), 11B(1) and 11D of the SEBI Act and relevant SEBI Rules/Regulations, including appropriate directions for putting prohibition on them from buying, selling or otherwise dealing in securities market, either directly

or indirectly, in any manner whatsoever, for a particular period, and directions not to be associated with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a particular period should not be passed against them. The *Noticees* were also asked to explain as to why directions to them to refund the fees collected from the investors/clients for its unregistered IA activities under Sections 11 and 11B (1) of *SEBI Act, 1992* either jointly or severally, should not be issued against them. In this regard, the *Noticees* were provided with the opportunity to file their objections/reply, if any, within 21 days from the date of the *interim order* and were also provided with an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request to be made by the *Noticees*, in that regard.

5. I note from the records available before me that the *interim order* was delivered to the *Noticee no. 3* at his address available on record (“*S/o Yogesh Kumar Doriya, Makan Number 10/1, Ward Number 15, Khour Darwaja, Jawad, Neemuch Madhya Pradesh - 458330*”) through SPAD. Regarding the *Noticee no. 1*, delivery of the *interim order* was attempted on addresses available on record with SEBI viz. (i) “*140/2, Vikas Nagar Udaipur, Distt. Udaipur, Rajasthan - 313803*” and (ii) “*Makan No.20, Bichali Gali, Jawad, Neemuch, Madhya Pradesh - 458330*”, however the same returned undelivered. Similarly, delivery of the *interim order* to *Noticee no. 2* was attempted on the addresses available on record with SEBI viz. (i) “*Indraprastha Complex-A, Sector 14, Hiran Magri, Udaipur, Rajasthan - 313002*”, (ii) “*Makan No.20, Bichali Gali, Jawad, Neemuch, Madhya Pradesh - 458330*” and (iii) “*Jawahar Nagar Vistar Neemuch 458441*”, however the same returned undelivered. Accordingly, the *interim order* had to be served upon *Noticees no. 1 and 2* through newspaper publication dated September 23, 2021 in ‘Times of India - Indore Edition’, ‘Dashpur Express - Neemuch Edition’, ‘The Indian Express - Jaipur Edition’ and ‘Rajasthan Patrika - Udaipur Edition’. However, the *Noticees* have neither filed any reply/objections to the *interim order* nor have sought any personal hearing. Nevertheless, in conformity with the principles of natural justice, an opportunity of

personal hearing was provided to the *Noticees* while scheduling the hearing on June 02, 2022. I note that the hearing notice was delivered upon the *Noticee no. 3* through SPAD on the address available in records. With regard to the *Noticees no. 1 and 2*, the hearing notice returned undelivered from the afore-mentioned addresses which was available with SEBI. Therefore, the hearing notice to these *Noticees* was served through newspaper publication dated May 25, 2022 in 'Times of India - Indore Edition', 'Dashpur Express - Neemuch Edition' and 'Rajasthan Patrika - Udaipur Edition'. I note that none of the *Noticees* appeared before me on the scheduled date of hearing. Under the circumstances, I observe that principles of natural justice have been adequately complied with in the present matter, and as the *Noticees* have preferred not to participate in the present proceedings before me for reasons best known to them, I am constrained to deal with the matter on merit based on the materials available on record. Needless to emphasise that the *Noticees* had sufficient intimation about the issuance of *interim order* vide which all transactions in their above mentioned bank accounts were prohibited and further transactions therein were made subject to the permission of SEBI. Therefore, it was in their own interest to appear before me personally to explain their position if they deserved any relaxation/relief from those prohibitions. Now after considering the charges levelled in the instant matter as spelt out in the *interim order*, it leads me to examine of the following issue:

- *Whether acts of the Noticees as imputed in the interim order cum SCN, have resulted in the violation of the provisions of SEBI Act, 1992 read with IA Regulations, 2013 and PFUTP Regulations, 2003, while providing the services related to Investment Advisory without having proper registration.*

6. Before advertng to the facts of the case to deal the aforesaid issue, it is apposite to refer to the relevant provisions of law, the violations of which have been alleged against the *Noticees* in the *interim order cum SCN*. Such provisions are reproduced herein for ready reference:

## **SEBI Act, 1992**

*Section 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:"*

*Section 12A. No person shall directly or indirectly –*

*(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

*(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

*(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"*

## **SEBI (Investment Adviser) Regulations, 2013**

*Regulation 3 (1): "On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations".*

## **SEBI PFUTP Regulations, 2003**

*Regulation 2 (c): "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person*

*with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include –*

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent,*
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
- (8) a false statement made without reasonable ground for believing it to be true.*
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

*And “fraudulent” shall be construed accordingly ...”*

***“Prohibition of certain dealings in securities***

3. No person shall directly or indirectly –

.....

- a) buy, sell or otherwise deal in securities in a fraudulent manner;
- b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

**4. Prohibition of manipulative, fraudulent and unfair trade practices**

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

.....

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities”

7. As stated in the beginning, SEBI had received a complaint *inter alia* alleging that CNR and BMS were involved in collecting money from investors through investment plans and the SCN accordingly alleged that they were involved in unregistered Investment Advisory activities. In this regard, from further scrutiny, it emerged that CNR was hosting a website called [www.capitalnivesh.com](http://www.capitalnivesh.com) but the same was found to be inactive at the time of passing of the *interim order*. Similarly, it was noted that BMS was hosting a website called [www.brightmoneysolutions.com](http://www.brightmoneysolutions.com) which was found to be active at the time of passing of the *interim order*. As per the information gathered from the above mentioned website / archived pages of the websites of the *Noticees*, it was observed that CNR and BMS, *inter alia*, made the following proclamations through their websites:

<u><a href="http://www.capitalnivesh.com">www.capitalnivesh.com</a></u>	<u><a href="http://www.brightmoneysolutions.com">www.brightmoneysolutions.com</a></u>
<p><i>"CAPITAL NIVESH is amongst the most trusted names in the arena of financial services. It is a SEBI (Security and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for the investors protection. This difference from others make us more disciplined, experienced, skillful and quantitative to make you receive desired profit from financial market by providing recommendation on suitable segment as per your risk bearing capacity.</i></p> <p><i>We provide tips in EQUITY (Stocks, Future, Option) &amp; COMMODITY (MCX) Segments, based on latest research by a team of highly qualified analytical experts who are skilled and impeccable in their analysis.</i></p> <p><i>CAPITAL NIVESH feels proud for the role, we have played in enabling and empowering self-directed and non-directed traders and investors for last long years. Since these years, our</i></p>	<p><i>"BM SOLUTIONS is amongst the most trusted names in the arena of financial services. It is a SEBI (Security and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for the investors protection. This difference from others make us more disciplined, experienced, skillful and quantitative to make you receive desired profit from financial market by providing recommendation on suitable segment as per your risk bearing capacity.</i></p> <p><i>We provide tips in EQUITY (Stocks, Future, Option) &amp; COMMODITY (MCX) Segments, based on latest research by a team of highly qualified analytical experts who are skilled and impeccable in their analysis</i></p> <p><i>BM SOLUTIONS feels proud for the role, we have played in enabling and empowering self-directed and non-directed traders and investors for last long years. Since these years, our</i></p>

<p><i>enduring individuals have put their trust in us to score incredible success rewards and personalized service that supports their needs and help them define their own financial success."</i></p> <p><i>Customers are requested to co-operate with the employees in providing KYC as Capital Nivesh follows all the norms of SEBI"</i></p> <p><i>"Capital Nivesh provide best tips in EQUITY (stocks, Future, Option) &amp; COMMODITY (MCX, NCDEX) segment. We do this with our strong research capabilities and robust team of experts, we help you to establish a legacy that will stand test of time. We take special care to minimize risk (adverse) while delivering qualitative growth without compromising on quality"</i></p>	<p><i>enduring individuals have put their trust in us to score incredible success rewards and personalized service that supports their needs and help them define their own financial success."</i></p> <p><i>Customers are requested to co-operate with the employees in providing KYC as BM Solutions follows all the norms of SEBI"</i></p> <p><i>"BM Solutions provide best tips in EQUITY (stocks, Future, Option) &amp; COMMODITY (MCX, NCDEX) segment. We do this with our strong research capabilities and robust team of experts, we help you to establish a legacy that will stand test of time. We take special care to minimize risk (adverse) while delivering qualitative growth without compromising on quality"</i></p>
---	---

8. The records before me also clearly suggest that the *Notices* had come out with a schedule of fees that would be charged from the investors in lieu of their advisory services. In this respect, I note that the website of the *BMS* contained following pricing details for availing various types of services:

<b>Service Name</b>	<b>Description</b>	<b>Price (INR)</b>
CUSTOMIZED MEMBERSHIP	<i>The Customized Service Package comprises of profitable Investment calls for short term Investors who are ardent to make profit instantly. Short term...</i>	25,000
AGR MEMBERSHIP	<i>The AGGRESSIVE Growth service Package comprises of profitable Investment calls for short term and long term Investors who are ardent to make profit instantly...</i>	75,000

DELIVERY PLUS MEMBERSHIP	<i>The DELIVERY PLUS Service Package comprises of profitable Investment calls for short term and long term Investors. CASH:- Stock cash segment...</i>	1,20,000
CGR MEMBERSHIP	<i>The Combative Growth Service Package comprises of profitable Investment calls for short term and long term Investors. CASH:- Stock cash segment is very...</i>	5,00,000
ADVANCED MEMBERSHIP	<i>The ADVANCED Growth Service Package comprises of profitable Investment calls for short term and long term Investors. CASH:- Stock cash segment...</i>	12,50,000

9. From the aforesaid facts, it is clearly ascertained that CNR and BMS, which are the proprietorship concerns of Naresh were allegedly engaged in rendering advisory activities relating to securities market to clients/investors against monetary consideration and such activities of providing advisory services relating to investing in, purchasing, selling or otherwise dealing in securities and various other investment products of securities, as was proclaimed by the said firms through their websites i.e. [www.capitalnivesh.com](http://www.capitalnivesh.com) and [www.brightmoneysolutions.com](http://www.brightmoneysolutions.com) respectively, were being carried out in an unauthorized manner without having a SEBI registration. At this juncture, it is pertinent to look at the definition of Investment Adviser (or short "IA") as articulated in regulation 2 (1) (m) of the IA Regulations, 2013 which states that 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". Further, I have also perused regulation 2(1)(l) of the IA Regulations, 2013 which defines Investment Advice as "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."

10. In the light of the aforesaid definitions read with the contents published and proclaimed on the websites of the *Notices* as well as the allegations imputed in the *interim order*, I note that the *Notices*, through their websites have made sufficiently clear to the public at large that they were engaged in offering investment advice as defined under regulation 2(1)(l) of the *IA Regulations, 2013* and through their websites they were offering to give advice related to investing in, purchasing and selling of securities as well as offering various service packages to investors at large, for subscription to securities which were nothing but offering of investment advisory services to the public.

11. The *interim order* has recorded that the aforesaid investment advisory services were being offered by the *Notices* in lieu of monetary considerations which were being paid by the concerned investors into the specified bank accounts of the *Notices* as per the instructions of the *Notices*, the details of which were also provided on the websites of the *Notices* under the payment option section. The following bank account details were / are mentioned on websites of *CNR* and *BMS* for receiving payments from the clients/investors:

<b>Entity</b>	<b>CNR</b>	<b>BMS</b>	
<b>Bank</b>	HDFC	HDFC	Bandhan Bank
<b>Account Name</b>	Capital Nivesh	Bright Money Solutions	BM Solutions
<b>Account No.</b>	50200038495361	50200047901917	50200015438477
<b>Account Type</b>	Current	Current	Current
<b>IFSC Code</b>	HDFC0000624	HDFC0000624	BDBL0001513

12. It is gathered from the KYC of the bank account number 50200015438477 with Bandhan Bank that the said account was being held in the name of *Ashwin* (*Noticee no. 3*) and the aforesaid bank account was used for accepting payments from the investors of *BMS*. It is also noted that the aforesaid 3 bank accounts received an aggregate amount of around INR 95,30,047 through a total of 798 credit entries (towards receipts of consideration from clients) from their respective dates of account opening till 06/12/2020.

13. Additionally, I also note that the *interim order* cum SCN has alleged that the *Notices* have presented themselves as SEBI registered IA on their websites. In this regard, I note that one of the reasons which enticed the investors for availing services/packages from the *Notices*, (as mentioned on their websites) was that it claimed/offered that “It is a SEBI (Security and Exchange Board of India) registered investment advisory firm, which follows all the norms made by SEBI for the investors protection.” However, the records available before me clearly suggests that none of the *Notices* is registered with SEBI as an IA.

14. In the light of the aforesaid findings, observations, false representations made by the *Notices* through their websites as well as the allegations imputed in the *interim order*, I find that the *Notices* had grossly indulged in falsehood by claiming on their websites that they are SEBI registered Investment Advisory firms thereby presenting to the public at large that they have the requisite legal authority to provide investment advisory services to investors. The *Notices* have not only claimed to be registered with SEBI but have further represented that they are one of the best stock advisory firms who caters & delivers the best stock recommendations in Equity Market and Commodity Market and that they have teams comprising of expert analysts with vast experience. The websites further claimed that they have been engaged in these activities for several years has been and providing tips that would surely help individuals to have financial success. Considering the aforesaid factual findings that led to the commencement of the instant proceedings, it leaves no doubt in my mind that the above noted activities indulged in by the *Notices*, squarely satisfy the conditions for identifying CNR and BMS as the entities that were engaged in providing investment advisory services to investors of securities market. The above observation further finds strength from the fact that the *Notices* have till date not placed any records / evidences contrary to the allegation made in the *interim order* so as to deny the above finding and allegations about them being engaged in offering investment advice as defined

under regulation 2(l) of the *IA Regulations, 2013*. Thus there is nothing on record to dispute that the *Notices* were offering advices to the investors, related to investing in, purchasing and selling of securities and were also offering various service packages to the investors for subscription into those packages for availing investment advisory services from the *Notices* as per the terms of those packages.

15. As pointed out above, with respect to the allegations made in the *interim order cum SCN*, till now no submissions have been put forth by the *Notices*. At this juncture, I find it apt to refer to and rely on the observation of the Hon'ble Securities Appellate Tribunal (for convenience "SAT") in the case of *Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013- DoD- 11.02.2014)*, wherein the Hon'ble SAT has observed that-".....As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor have availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices..."

16. Considering the afore-discussed factual analysis about the activities engaged in/services rendered by the *Notices* as proclaimed by them on their own websites, the examination of bank account statements of the *Notices* (supported by the KYC) and most importantly, the fact that there has been no denial or objection to the charges/allegations levelled in the SCN by the *Notices no. 1, 2 and 3* either during the course of hearing held on June 02, 2022 (which they failed to attend) or in the form of a reply refuting such charges, it leaves no further scope for any doubt to conclude that the alleged activities indulged into by the *Notices no. 1, 2 and 3* squarely fall under the category of 'investment advisory services' as defined under regulation 2 (1)(l) of the *IA Regulations, 2013*.

17. Further, considering the fact that the websites of the *Notices* clearly showed that their services were in the nature of investment advisory services coupled with the fact that the three Bank accounts of the *Notices* have received an aggregate deposits worth of INR 95.30 lacs during the period of April 12, 2019 to December

06, 2020, it leads to an unassailable conclusion that the said proceeds and credit entries as reflected in the said Bank Accounts (HDFC and Bandhan Bank) of the *Notices* were in fact the fees that were received towards consideration for providing the advisory services offered by the *Notices* to the public through their websites. Thus, the records before me are self-evident of the fact that the *Notices* were engaged in offering investment advice to the investors in lieu of subscriptions purchased/fees paid by the investors through its websites. The *Notices*, by preferring to abstain from the personal hearing and further by choosing not to file any reply or written submission to rebut the allegations and observations recorded against them in the *interim order*, and by not even making an attempt to suggest that the money received by them in the above referred bank accounts pertained to some activities other than the investment advisory activities, have made it clear that they have no explanation to offer in their defense. Under the circumstances, I find that based on consideration of materials on record, it can be safely held that the entire amount of INR 95.30 lacs credited in three bank accounts of the *Notices* represented nothing but the fees received by the *Notices* from their business of investment advisory services.

18. Therefore, there is no ambiguity left that *Notices no. 1, 2 and 3* were engaged in the business of providing investment advice to the public, in lieu of monetary consideration and were thus, acting as an 'investment adviser', as defined under regulation 2(m) of the *IA Regulations, 2013*.

19. At this juncture, it is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, *IA Regulations, 2013* provide various safeguards to ensure that the interest of the investors who receive investment advice, are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under regulation 3(1) of the *IA Regulations, 2013*, which, *inter alia*, provides that, no person shall act

as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from SEBI and it has to conduct its activities in accordance with the provisions of *IA Regulations, 2013*. Further safeguards provided under *IA Regulations, 2013* include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on the Investment Advisor from entering into transactions in securities himself, which are contrary to the advice given to the clients at least for 15 days from the date of giving such advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

20. In order to ensure protection of investors' interest who desire to receive investment advice from various Investment Advisors, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and has to conduct its activities in accordance with the provisions of the relevant SEBI Regulations. However, the activities engaged in by the *Notices*, as brought out from the various materials described above including their websites, bank accounts, complaints, etc. seen in the backdrop of the aforesaid regulatory provisions, show that the *Notices* were holding themselves out and were acting as IA, although the *Notices* were not registered with SEBI in the capacity of IA. Hence, I find that these activities/ representations as were being made by the *Notices* without holding the mandatory certificate of registration as investment adviser, are in blatant violation of Section 12(1) of *SEBI Act, 1992* read with regulation 3(1) of the *IA Regulations, 2013*.

21. In my view, unregistered investment advisors, like the *Notices* in the present case, can put the interest of the investors at great risk by misleading them or misutilising their funds to the detriment of the interest of the investors. In the

present case, *Noticees* on their website have, *inter alia*, have mentioned that CNR and BMS “provide tips in EQUITY (Stocks, Future, Option) & COMMODITY (MCX) Segments, based on latest research by a team of highly qualified analytical experts who are skilled and impeccable in their analysis.” *Noticees* on their websites have further represented that CNR and BMS are SEBI registered investment advisory firms, in which top experts forecast market trends and recommend various products smartly and take special care to minimize risk (adverse), while delivering qualitative growth without compromising on quality. As stated above, *SEBI Act, 1992* and *IA Regulations, 2013* mandate that an investment advisor has to hold a certificate of registration to act as such. However, as already pointed out above, I find that the *Noticees* were not holding any certificate of registration from SEBI to act as an investment advisor. Thus, the claims/representations made by the *Noticees* on their websites were blatantly misleading and were made only to allure the investors to avail investment advisory services being offered by the *Noticees*. The *Noticees* have knowingly misrepresented on the websites floated by them and induced the investors to trade in securities by disclosing that they had teams comprising of experts in stock market analysis and are experienced in investment advisory and that by making investment on the lines of tips provided by its expert team will certainly earn profit. Thus, the *Noticees* offered their investment advisory services through their websites in an illegal manner to investors, with the sole objective of raising money from the investors by way of subscription to their various investment packages/plans, even though the *Noticees* were not holding any Investment Advisor registration certificate when they were making such offers to the public. Therefore, such misleading representations made by the *Noticees* are deceptive and fraudulent in nature and are well covered within the definition of “fraud” defined under regulation 2(1)(c) of the *PFUTP Regulations, 2003*. It is beyond doubt that the above discussed fraudulent activities/ conduct/ act/ practice of the *Noticees*, grossly amount to violation of provisions of Section 12A (a) (b) and (c) of *SEBI Act, 1992* and regulations 3 (a), (b), (c) (d) and regulations 4(1) of

*PFUTP Regulations, 2003*. Further, regulation 4(2)(k) of *PFUTP Regulations, 2003*, provides that dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves even disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities. In the present case, as seen from the foregoing discussions, even without holding a certificate of registration as investment adviser, the *Notices* have knowingly held themselves out as an Investment Adviser on their websites. Thus, I find that the *Notices* have also violated regulation 4(2)(k) of *PFUTP Regulations, 2003*.

22. I understand that the materials available on record do not indicate the exact amount of fees collected by the *Notices*, as a result of providing such investment advice to investors in violation of the provisions of the *IA Regulations, 2013*. However, the *interim order* records that the *Notices* have received credits worth of INR 95.30 lacs in their three Bank Accounts (HDFC Bank - 50200038495361, HDFC Bank - 50200047901917 and Bandhan Bank - 50200015438477). In any case, from the complaint that was received by SEBI against the *Notices*, it is observed that the *Complainant* had claimed that he had paid money to the *Notices*, for availing investment advisory services from them, which further reinforces the unauthorised investment advisory services being rendered by the *Notices*, holding out false promises to induce the innocent investors.

23. In view of the foregoing discussions and my observations/findings about the activities engaged in by the *Notices* in rendering investment advisory services in an unauthorised & illegal manner, as has been established both on the basis of various facts & circumstantial evidences, in order to achieve the avowed object of SEBI Act, 1992, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4), 11B (1) and 11D, read with of Section 19 of the *SEBI Act, 1992* and regulation

11 of the *PFUTP Regulations, 2003*, while disposing of the allegations levelled in the *interim order cum SCN* hereby direct the following:

- i. The *Notices* shall jointly and severally, within a period of three months from the date of this Order, refund the money (approximately INR 95.30 lacs as indicated at paragraph 22 of this Order) received from the clients / investors / complainants, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;
- ii. To give effect and implement the above direction, the *Notices* shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of their contact person such as names, addresses and contact details including email id and phone number, within 15 days of coming into force of this Order;
- iii. The repayments to the clients/investors / complainants shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- iv. After completing the refund as directed in sub-paragraph (i) above, within a further period of 15 days thereafter, the *Notices* shall file a report detailing the amount refunded to SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, SEBI Bhavan II, Plot No. C7 G Block, Bandra Kurla Complex, Bandra (East) Mumbai -400051. The said report should be duly certified by an independent Chartered Accountant indicating entity wise details to whom refunds have been issued such as name, amount refunded, communication address, mobile numbers, telephone numbers, etc.

alongwith the mode of payment by banking transactions duly supported by the certified copy of bank statements;

- v. The remaining balance amount, if any, (after returning to the investors / clients / complainants out of the said INR 95.30 lacs, in case claims so received fall short of the amount of INR 95.30 lacs) shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/ complainants/ investors who were availing the investment advisory services from the *Notices*. Thereafter, remaining balance amount if any, which could not be returned to the clients / investors / complainants, will be deposited in the Investors Protection and Education Fund maintained by SEBI;
- vi. The *Notices* are restrained from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/investors who were availing the investment advisory services from the *Notices* as directed above and for the purpose of depositing the balance amount with SEBI, as directed in this Order, from the bank account of the *Notices*, wherein debit has been frozen by virtue of *interim order* dated December 17, 2020;
- vii. The *Notices* are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 02 (two) years from the date of this Order or till the expiry of 02 (two) years from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in sub-paragraph (i) and (v) above, whichever is later;

- viii. Mr. Naresh Nimawat and Mr. Ashwin Doriya are restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in any capacity for a period of 02 (two) years from the date of this Order or till the expiry of 02 (two) years from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in sub-paragraph (i) and (v) above, whichever is later;
- ix. The *Notices* shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in sub-paragraph (vii) and (viii) above, either directly or indirectly, investment advisory services or any other activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities law;
- x. Upon submission of report on completion of refunds to complainants/ investors to SEBI and after depositing the balance money with SEBI, if any, the direction at sub-paragraph (vi) above shall cease to operate within 15 days thereafter;
- xi. The *Notices* shall resolve all the complaints pending against them and file a report of such resolution with SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, SEBI Bhavan II, Plot No. C7 G Block, Bandra Kurla Complex, Bandra (East) Mumbai -400051. The aforesaid report shall be filed along with the report as contemplated under sub-paragraph (iv) above, within a period of 30 days, from the date of this Order.
24. The direction for refund, as given in paragraph 23 (i) and 23 (v) above, does not preclude the clients/investors of the *Notices* from pursuing the other legal

remedies available to them under any other law, against the *Notices* for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

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

26. Obligation of the *Notices*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Notices* in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

27. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Notices* shall remain frozen.

28. A copy of this Order shall be served upon the *Notices*. A copy of this Order shall also be forwarded to:

- i. All the recognized Stock Exchanges, Depositories, Banks and Registrar and Transfer Agents for necessary compliance with the above directions; and
- ii. The Government of Madhya Pradesh and Rajasthan for action, if any.

**Sd/-**

**DATE: OCTOBER 28, 2022**

**S. K. MOHANTY**

**PLACE: MUMBAI**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**