

WTM/AB/WRO/WRO/14741/2021-22

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**FINAL ORDER**

**UNDER SECTIONS 11, 11(4), and 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.**

**In respect of:**

| <b>Noticee No.</b> | <b>Name of the entity</b>                  | <b>PAN No.</b> |
|--------------------|--|----------------|
| 1.                 | M/s. Cash Cow Broking & Advisory Solutions | AAIFC2855R     |
| 2.                 | Mr. Shailendra Sen (Partner)               | BUXPS9559Q     |
| 3.                 | Mr. Amit Jain (Partner)                    | AGSPJ3021G     |
| 4.                 | Mr. Chirag Sharma (Partner)                | ASWPS7685C     |

**In the matter of Cash Cow Broking & Advisory Solutions**

*(Aforesaid entities are hereinafter individually referred to as by their respective name or noticee number and collectively as “the Noticees”).*

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1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had received complaints against M/s. Cash Cow Broking & Advisory Solutions, (hereinafter referred to as “**Cash Cow**”), wherein it was *prima facie* alleged that that Cash Cow was engaged in ‘investment advisory services’ without having the requisite registration as mandated under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”). Cash Cow is a partnership firm whose partners are Mr. Shailendra Sen (Noticee no. 2), Mr. Amit Jain (Noticee no. 3) and Mr. Chirag Sharma (Noticee no. 4).
2. Based on the same, an examination of the complaints was carried out by SEBI, as follows:

a) The website [www.cashcowresearch.com](http://www.cashcowresearch.com) of the Noticees was browsed for information, but the same was not active at that time. The archive pages of the website was downloaded from [www.archive.org](http://www.archive.org) to gather information. From the pages downloaded, it was observed that the Noticees had disclosed the following in its website:

(i) *Cash Cow is a leading financial services company in area of broking and advisory industries in India. We at Cash Cow provide broking platform for online/offline trading @ very low brokerage of 0.015 paisa. In broking, we have registered in all exchanges NSE, BSE, MCX, NCDEX, MCX-SX. In advisory about stocks, commodity, currency, agri, etc., research is based upon fundamental & technical analysis of all counters, scripts, & indexes.*

(ii) *We offer Advisory Services, Broking Services, Portfolio Services, and Fund Management.*

(iii) *Portfolio Services: In this service, we provide you an efficient return on your investment with transparency.*

(iv) *Advisory Services: In this service we provide you recommendation in all segments such as Stock cash, Stock future Tips, BTST Tips, Forex, etc.*

(v) Various packages were being offered for subscription at specified rates and for specific products. One such illustration is given below:

*Stock Future Tips– This service is for the traders who trade in Stock Future. These Stock Future Tips are the after effect of center exploration and investigation and help you to get a huge profit. Our call via SMS will reach you as soon as the analysts send so there is no time lag between you reading it and working on the call.*

*The fee ranges from Rs.8,000/- per month to Rs.48,000/- yearly.*

(vi) The payment to subscribe to the services can be made directly to the bank accounts opened in the name of Cash Cow with ICICI Bank, Axis Bank and Central Bank of India, the details of which were mentioned on their website. Alternatively, payments can be made through PayU Money.

(vii) A search was also made on the internet to gather any other information about Cash Cow. It was observed that there were

complaints on [www.consumercomplaints.in](http://www.consumercomplaints.in), wherein the complainants have alleged that Cash Cow had promised that they will get good returns from the market.

- b) The Account Opening Forms (AOF), KYC documents and transaction / account statements of bank accounts of Cash Cow obtained from ICICI Bank, Axis Bank and Central Bank of India were examined and the following observations were made:

**1) ICICI Bank (A/c No. 657305500056 and 004105014315) –**

- (i) A/c No. 657305500056 was opened in March, 2013 in the name of partnership firm, Cash Cow, having its address at G2, Suryansh Exotika, Block E, 94 Alok Nagar, Kanadiya Road, Indore.
- (ii) The email id is [cashcowbroking@gmail.com](mailto:cashcowbroking@gmail.com) and PAN: AAIFC2855R.
- (iii) The partners are Mr. Amit Jain and Mr. Shailendra Sen.
- (iv) The industry is mentioned as Commodities Broking and Advisory.
- (v) The A/c no. 657305500056 did not have many transactions, and received Rs.15,000/- during June 2014 to August, 2014.
- (vi) With respect to A/c no. 004105014315, the entity had received credits aggregating to Rs. 10,81,521/- during June, 2015 to February, 2017.
- (vii) Balance amount available in the a/c as on February 24, 2017 is Rs.77,037/-.
- (viii) Analysis of bank account revealed that there were 126 credit transactions which were in round figure ranging from Rs.1,000/- to Rs.1,00,051/- aggregating to Rs.10,81,521/-. The credits were mainly in the form of cash deposits and mobile money transfers.

**2) Axis Bank (A/c No. 915020002699502) –**

- (i) A/c No. 915020002699502 was opened in January, 2015 in the name of partnership firm, Cash Cow, having its address at G2, Suryansh Exotika, Block E, 94 Alok Nagar, Kanadiya Road, Indore.
- (ii) The email id is [shailendra.sen@cashcowresearch.com](mailto:shailendra.sen@cashcowresearch.com) and PAN: AAIFC2855R.

- (iii) The partners are Mr. Shailendra Sen and Mr. Chirag Sharma.
- (iv) As per the AOF, the type of business activity is advisory service.
- (v) The entity has received credits aggregating to Rs. 24,80,873/- during the period January, 2015 and February, 2017. Out of the said amount of Rs. 24,80,873/-, credited into Axis Bank account from PayU Money amounted to Rs. 10,34,361/-.
- (vi) Credits from PayU Money were observed during the period December, 2016 and February, 2017. The credit amounts received through PayU Money appear to be fees paid by clients for the purpose of investment advisory services.
- (vii) Balance amount available in the account as on February 27, 2017 is Rs.1,80,143/-.
- (viii) Analysis of bank account revealed that there were 95 credit transactions which were in round figure ranging from Rs. 500/- to Rs. 1,00,000/- aggregating to Rs.14,46,512/- (excluding payment gateways). These amounts appeared to have been collected as an advisory fee.

**3) Central Bank of India (A/c No. 3213140286) –**

- (i) The entity has received credits aggregating to Rs. 29,89,169/- during the period August, 2014 and December, 2016. Out of Rs. 29,89,169/-, credits from PayU Money amounted to Rs. 27,88,169/-.
- (ii) Credits from PayU Money were observed to be during the period August, 2014 and December, 2016. The credit amounts received through PayU Money appear to be fees paid by clients for the purpose of investment advisory services.
- (iii) Balance amount available in the Account as on January 28, 2019 is Rs. 1,689/-.
- (iv) The bank was unable to provide a copy of the AoF of the entity since the records were not traceable due to the branch office being flooded with water in 2013 and majority of records were damaged, but has informed that as per the date available in their software, the account was opened by Partners, Mr. Shailendra Sen and Mr. Amit Jain.

- 4) A tabular depiction of money credited into the various bank accounts held by cash cow is as under:

| Sl. No. | Bank Account No                   | Transaction Period           | Aggregate Value of Credit Transactions (in Rs.) |
|---------|-----------------------------------|------------------------------|---|
| 1.      | ICICI Bank A/c No. 004105014315   | October 2015 to July 2017    | 10,81,521                                       |
| 2.      | Axis Bank A/c No. 915020050222831 | October 2015 to Oct 2017     | 24,80,873                                       |
| 3.      | Central Bank A/c No. 3213140286   | August 2014 to December 2016 | 29,89,169                                       |
|         | <b>Total</b>                      |                              | <b>65,51,563</b>                                |
| 4.      | Credits through PayU Money        |                              | 38,22,530                                       |

- c) Further, complaints filed against Cash Cow were examined and the details of the same are as under:

- (i) Mr. Vikram Oswal has, *inter-alia*, alleged that he paid Rs. 10,000/- on January 7, 2017 for profit commitment base plan (PCB) in which Cash Cow has committed to give minimum profit of Rs. 80,000/- in 30 days. From the email dated January 7, 2017 sent by Cash Cow to the complainant, it is seen that Cash Cow was providing investment advisory activity without obtaining a certificate of registration as an investment adviser from SEBI. The relevant extract of the said e-mail is reproduced below.

Subscription details

Payment Mode: Payment Gateway

Amount: 10000

Payment Date: 2017-01-07

Invoice No: INV431

Service details

Services Pack: PCB Pack

Start date: 2017-01-09

Expiry date: 2017-02-12

Cash Cow strictly follow Trading principles and Stop Loss policy wherein Customer by default agree to not do/enter any trade without defined Stop Loss.

- (ii) Mr. Devesh has alleged that he has been receiving SMSs from Cash Cow asking him to subscribe to their services. Mr. Devesh has submitted copy of SMSs received in March, 2015, extract of which is given below:

Stock future Pack:  
SEL IDFC MAR FUTURE  
BELOW 171.50 SL 172.60  
TGTS 170.50, 169.50  
Cash cow research

Stock Future Pack:  
1st TARGET ACHIEVED IN IDFC MAR FUTURE SELL  
HOPE YOU BOOKED PROFIT

Stock Future Pack:  
Kindly exit from ONGC MAR FUT BUY CALL

- d) SEBI sent a letter dated March 14, 2016 to the entity's address in Orbit Mall, Vijay Nagar, Indore, seeking information about unregistered investment advisory activities. Mr. Shailendra Sen (Noticee no. 2), on behalf of Cash Cow, vide its letter dated March 23, 2016 had, *inter-alia*, submitted the following:

- (i) They had incorporated the partnership firm on September 05, 2012 with 2 partners, Mr. Amit Jain (Noticee no. 3) and Mr. Shailendra Sen (Noticee no. 2). Mr. Chirag Sharma (Noticee no. 4) joined as a partner on October 15, 2014. The objective of the partnership was to offer broking services, internet sales and advisory services.
- (ii) They initiated only broking and internet sales in the years 2012-14. They initiated advisory services in the month of August, 2014 and the revenue from advisory services is only Rs.1,90,800/- collected from 22 clients.
- (iii) The office was shifted from Alok Nagar to Orbit mall in January, 2015.
- (iv) That they were of an understanding that since they are registered as a sub broker and as mentioned in regulation 4 (g) of SEBI IA Regulations, 2013 granting exemption to sub broker exempts them from the requirement of getting registered. However, post receiving SEBI letter, they now know that they are required to get registered as an Investment

Advisor besides being an Authorized Person. They have stopped offering advisory services with immediate effect and shall offer such advisory only once they are registered, for which they shall make an application in the required format as soon as possible. Further, that requisite changes have been made in the website to ensure that no advisory sales are conducted from their website.

e) However, an examination of the bank accounts revealed that Cash Cow had received payments towards advisory business subsequent to its submission to SEBI in March, 2016. It was observed that Cash Cow had received payments amounting to Rs.23,48,652 through Pay U Money gateway during the period April, 2016 to February, 2017. Further, Cash Cow had also received cash deposits and credits amounting to Rs.15,15,805/- during the period April, 2016 to February, 2017 in their Bank accounts, subsequent to their submission to SEBI that they would stop their advisory business.

f) Accordingly, it was *prima face* observed that:

- a. Cash Cow and its partners were carrying out unregistered investment advisory activity without obtaining registration from SEBI and through their website mobilized a sum of Rs. 65.51 lakhs during the period August, 2014 to October, 2017. Cash Cow vide its letter dated March 23, 2016 to SEBI had also accepted that it was providing advisory services from August, 2014 and was not aware that SEBI registration was necessary. Further, Cash Cow also submitted that it would stop rendering such services and make changes to its website.
- b. Subsequent to submissions to SEBI in March, 2016 that they will close their business, Cash Cow has mobilized Rs. 38,64,457/- during the period April, 2016 to October, 2017.
- c. Cash Cow Broking is also registered as Authorized Person with Angel Broking Ltd and Angel Commodities Broking Pvt. Ltd.

3. In view of the above, a show cause notice was issued to the Noticees on March 12, 2020 (hereinafter referred to as “**SCN**”), alleging that the Noticees have carried out investment advisory activities without obtaining a certificate of registration from

SEBI. Accordingly, it was alleged that the Noticees have violated Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013. The SCN called upon the Noticees to show cause as to why suitable directions including debarment from securities market, refund of fees collected, non-association with listed entities, intermediaries, etc., should not be passed under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 for violation of section 12(1) of the SEBI Act, 1992 read with regulation 3(1) of the IA Regulations, 2013.

4. The Noticees were provided with the opportunity to file their objections/reply, if any, within 21 days from the receipt of SCN and were also provided with an opportunity of personal hearing before SEBI. The Noticees filed their reply to the SCN vide letter dated April 06, 2020. The matter was then placed before me on August 05, 2021 and following the principles of natural justice, an opportunity of personal hearing was granted to the Noticees on September 23, 2021. On September 23, 2021, Noticee no. 2 appeared on behalf of all the Noticees and made submissions. The Noticee no. 2 also sought time to file written submissions and accordingly, ten days' time was granted to the Noticees to file their written submissions. Thereafter, the Noticee no. 2 filed written submissions on October 05, 2021.
5. The Noticees vide letters dated April 06, 2020 and October 05, 2021 have made the following submissions:
  - a. *By way of a partnership deed dated September 05, 2012 a partnership firm in the name and style of Cash Cow Broking & Advisory came to be constituted which initially comprised of two partners namely Shri Amit Jain and myself and thereafter on October 15, 2014, a third partner Shri Chirag Sharma joined Cash Cow.*
  - b. *The firm/partners were carrying on activities as an Authorised Person and not as an Investment Advisor.*
  - c. *That on March 14, 2016, when SEBI wrote a letter to Cash Cow firm seeking information about the alleged role as an Investment Advisor, they had ceased the operations of Cash Cow with immediate effect. However, because of our earlier commitments, they were compelled to service the existing clients upto*



*February 2017 in order to achieve a proper closure to the operations mainly as regards our operations and also to minimize the losses of then existing clients. However, it may be noted the partnership firm stood dissolved w.e.f. March 29, 2017 and no new clients were on board from April 2016 pursuant to the SEBI notice.*

- d. Further, without prejudice to what has been said herein and assuming for the sake of argument and without admitting that Cash Cow/or myself in my personal capacity were engaged in services as an Investment Advisor, I submit that the services were being provided under genuine and a bona-fide belief that the said business was well within the scope of work of an authorised person of a sub-broker and that the Partners was not required to obtain any separate registration as an investment advisor and that they were not in violation of any SEBI Regulations.*
- e. Further, I wish to point out that I have cleared my investment advisor examination conducted by National Institute of Securities Market and on September 11, 2017, I applied before SEBI for grant of certificate of registration as an investment advisor under the proprietorship concern named Capital Heed Financial Research and the registration was duly granted w.e.f. December 29, 2017 and hence without prejudice to what has been said herein and assuming for the sake of argument and without admitting that Cash Cow/or myself in my personal capacity were engaged as an investment advisor, I say that any alleged violation that I may have committed in good faith during the period between August 2014 to Feb 2017 may be pardoned.*
- f. I had already suffered a lot of losses due to Covid-19 and interim order received from SEBI in Nov 18, 2019 for not doing any new or existing sales in my SEBI registered firm Capital Heed Financial Research, and I did 100% compliance as said by SEBI. In the final order in the matter of Capital Heed Financial Research, I am already banned for three years from securities market. Mr. Chirag Sharma and Mr. Amit Jain left fully of the working of investment advisory and broking since end of February 2017. And even before they were not actively participate in the working of cash cow.*

- 6. I note that the definition of investment adviser, as given in Regulation 2(1)(m) of IA Regulations, 2013, provides 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". Regulation 2(1) (l) of the IA Regulations 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."*

7. I note that the Noticees had a website [www.cashcowresearch.com](http://www.cashcowresearch.com) and the Noticees had *inter alia* claimed on its website that it is providing investment advisory services and that they offer recommendation in all segments such as stock cash, stock future tips, BTST tips, forex etc. As per the website, they offered various packages for subscription at specified rates and for specific products. One such illustration is given below:

*Stock Future Tips– This service is for the traders who trade in Stock Future. These Stock Future Tips are the after effect of center exploration and investigation and help you to get a huge profit. Our call via SMS will reach you as soon as the analysts send so there is no time lag between you reading it and working on the call.*

*The fee ranges from Rs.8,000/- per month to Rs.48,000/- yearly.*

8. I find that these services were being offered by the Noticees in lieu of the consideration which could be paid by the investor concerned directly to the bank accounts opened in the name of M/s. Cash Cow Broking & Advisory Solutions with ICICI Bank (A/c No. 657305500056 and 004105014315), Axis Bank (A/c No. 915020002699502) and Central Bank of India (A/c No. 3213140286), the details of which were mentioned on their website and alternatively through PayU money which was linked to their Axis Bank and Central Bank of India accounts. From the details of the said bank accounts, I note that in aggregate, a total of Rs. 1,03,74,093/- has been credited during the period October 2015 to October 2017. From the aforesaid facts, I find that Cash Cow was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through its website [www.cashcowresearch.com](http://www.cashcowresearch.com). I note that

the Account Opening Form for the ICICI Bank Account, copy of which was forwarded by the bank to SEBI, that the type of industry of Cash Cow is Commodities broking and advisory and the partners are mentioned as Mr. Amit Jain (Noticee no. 3) and Mr. Shailendra Sen (Noticee no. 2). I note that the Account Opening Form for the Axis Bank Account, copy of which was forwarded by the bank to SEBI, that the type of industry of Cash Cow is advisory services and the partners are mentioned as Mr. Chirag Sharma (Noticee no. 4) and Mr. Shailendra Sen (Noticee no. 2). I also note from the documents provided by Central Bank of India that the account was opened by partners, Mr. Amit Jain (Noticee no. 3) and Mr. Shailendra Sen (Noticee no. 2). Further, I note that the Noticees vide letter dated March 23, 2016 to SEBI had submitted that they had incorporated a partnership firm on September 05, 2012 with 2 partners, Mr. Amit Jain (Noticee no. 3) and Mr. Shailendra Sen (Noticee no. 2) and Mr. Chirag Sharma (Noticee no. 4) joined as partner on October 15, 2014. The Noticees submitted that the objective of the partnership was to offer broking services, internet sales and advisory services in the share market and they initiated advisory service in the month of August, 2014 and collected revenue from advisory services from 22 clients. Thus, I find that Cash Cow was the partnership concern of Mr. Shailendra Sen (Noticee no. 2), Mr. Amit Jain (Noticee no. 3) and Mr. Chirag Sharma (Noticee no. 4) and were engaged in investment advisory activity. In view of this, I find that Noticees were providing the investment advice, in lieu of consideration. In terms of Regulation 2(1) (l) of IA Regulations, 2013 such an advice is "investment advice". Therefore, I find that Noticees were engaged in the business of providing investment advice to public, for consideration and were thus, acting as an investment adviser, as defined under Regulation 2(1) (m) of the IA Regulations, 2013.

9. In this regard, the Noticees have submitted that services were being provided under genuine and a bona-fide belief that the said business was well within the scope of work of an authorised person of a sub-broker and that the Partners were not required to obtain any separate registration as an investment advisor and that they were not in violation of any SEBI Regulations. Further, the Noticees have submitted that upon receiving SEBI letter on March 14, 2016 seeking information about the alleged role as an investment advisor, they ceased the operations of

Cash Cow with immediate effect. However, that because of their earlier commitments, they were compelled to service the existing clients upto February 2017 in order to achieve a proper closure to their operations mainly as regards their operations and also to minimize the losses of their then existing clients.

10. With regard to the aforesaid submissions of the Noticees, I note that it is a well settled law that ignorance of law is no excuse. Hence, the Noticees cannot take the plea that they had genuine and bona-fide belief that the said business was well within the scope of work of an authorised person of a sub-broker as the provisions of the SEBI Act, 1992 and the IA Regulations, 2013 are clear in this regard that a person must obtain a certificate of registration before acting as an investment advisor. I note that Section 12(1) of the SEBI Act, 1992 provides as under:

*“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.”*

11. In order to protect the interest of investors and to maintain integrity of the securities market, IA Regulations, 2013 provides safeguards to ensure that the investors who receive investment advice are protected. One such safeguard is that any person carrying out investment advisory activities has to obtain registration from SEBI as required under Regulation 3(1) of the IA Regulations, 2013. Regulation 3(1) provides that, *“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”* and conduct its activities in accordance with the provisions of IA Regulations. Further, I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations, 2013:

- (i) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as

specified in the First Schedule to IA Regulations, 2013 along with requisite non-refundable application fee;

(ii) The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:

- a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;
- b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
- c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

(iii) Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

12. Therefore, I note that safeguards provided under IA Regulations, 2013 requires continued minimum professional qualification and net-worth requirement for investment adviser, including disclosure of all conflict of interest, prohibition on entering into transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client based on client's objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc. Hence, the contention of the Noticees that they acted in genuine and bona fide belief is untenable.
13. Further, with regard to the submission of the Noticees that they ceased the operations of Cash Cow with immediate effect in March 2016, but because of their earlier commitments, they were compelled to service the existing clients upto February 2017, I note that Cash Cow had submitted in March, 2016 to SEBI that it would stop rendering such services and make changes to its website. However, I note that subsequent to making submissions to SEBI in March, 2016 that they will close their business, Cash Cow had mobilized Rs. 38,64,457/- during the period April, 2016 to February, 2017. Hence, I note that the Noticees have continued to act as investment advisors even after submitting to SEBI that it would stop its unregistered investment advisory services. Further, the submission of the Noticees that they were compelled to service their existing clients due to earlier commitments is absolutely unacceptable and is an admission of their continuing violation of the aforesaid provisions of the SEBI Act and IA Regulations in acting as unregistered investment advisors. Hence, the aforesaid submissions of the Noticees are untenable.
14. The Noticees have also submitted that Noticee no. 2 had cleared investment advisor examination conducted by National Institute of Securities Market and applied before SEBI for grant of certificate of registration as an investment advisor under the proprietorship concern named 'Capital Heed Financial Research' and registration was granted by SEBI w.e.f. December 29, 2017 and hence, any violation that they may have committed in good faith during the period between August 2014 to February 2017 may be pardoned. In this regard, I note that proceedings were initiated by SEBI against Capital Heed Financial Research and its proprietor Mr. Shailendra Sen (Noticee no. 2) and vide SEBI Order dated June

01, 2021, it was held that:

*“31. To sum up, I find that Mr. Shailendra Sen, when seeking registration from SEBI as an investment adviser in his individual capacity, was under a statutory obligation to disclose his prior activities in relation to the securities market including the unauthorized investor advisory activities undertaken by his partnership firm in true and correct sense to SEBI. However, it is now clear that he has knowingly made a false declaration in his application form for registration as investment adviser stating that he was not engaged in investment advisory services prior to filing his application thereby has intentionally furnished a false/misleading/wrong information to SEBI in violation of Clauses 1 and 8 of the Code of Conduct for investment adviser read with regulation 15(9) of the IA Regulations. Moreover, the Noticee has also failed to disclose the fact of his earlier engagement in the activities of Cash Cow in the capacity of a partner of the said firm, even after the certificate of registration for Capital Heed was granted to him and such failure on the part of the Noticee to disclose such information which was not disclosed at the time of obtaining the registration has led to violation of regulation 13(b) of the IA Regulations. The aforesaid misconduct on the part of the Noticee has also amounted to violation of regulation 13(a) of the IA Regulations. At the same time, the Noticee has misrepresented to investors that it can provide PMS although it did not hold a certificate of registration from SEBI to do so, thereby violating regulation 3 of PMS Regulations, 1993.”*

15. From the above order, I note that Noticee no. 2 had made false declaration in his application form for registration as investment adviser under the proprietorship concern named 'Capital Heed Financial Research' before SEBI, stating that he was not engaged in investment advisory services prior to filing his application and thereby had intentionally furnished a false/misleading/wrong information to SEBI. Further, Noticee no. 2 had failed to disclose that it had engaged in investment advisory services as a partner of Cash Cow even after the certificate of registration for Capital Heed Financial Research was granted to him. I note that Noticee no. 2 had tried to conceal its unregistered activities from SEBI and this shows that the conduct of the Noticee no. 2 has been dubious and not genuine. Therefore, grant of registration by SEBI to Noticee no. 2 on the basis of misrepresentation cannot be taken by Noticee no. 2 as mitigating factor to condone his unregistered investment advisory activities carried along with other Noticees herein. In view of such conduct, the contention of the Noticees that Noticee no. 2 had later obtained SEBI registration under the proprietorship concern named 'Capital Heed Financial Research' and any violation that they may have committed in good faith during the

period between August 2014 to February 2017 may be pardoned is deplorable and therefore, untenable.

16. The activities of the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid provisions show that the Noticees were holding themselves out and acting as an investment adviser for consideration. However, it is noted that the Cash Cow was not registered with SEBI in the capacity of Investment Advisor. Hence, I find that these activities/representations as being made by the Noticees without holding the certificate of registration as investment adviser are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.
17. I note that in terms of Section 4 of the Indian Partnership Act, 1932 "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". Further, "Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name". Thus, the partnership firm is nothing but all the partners acting together. Therefore, Noticees no. 1 to 4 are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.
18. From the bank account statement of the Noticees opened in the name of Cash Cow with ICICI Bank (A/c No. 657305500056 and 004105014315), Axis Bank (A/c No. 915020002699502) and Central Bank of India (A/c No. 3213140286), it is observed that the aforesaid bank accounts received in aggregate, total credits of Rs. 1,03,74,093/- during the period October 2015 to October 2017. I note that partnership firm i.e. Cash Cow, in whose name all these bank accounts were opened, had in the bank account opening forms indicated investment advisory service as its business activity. Therefore, it is reasonable to draw an inference that amounts credited in these bank accounts were towards investment advisory services rendered by the Noticees. Further, I note that the complainant Mr. Vikram Oswal has claimed that he had paid an amount of Rs. 10,000/- to the Noticees, for availing investment advisory services from the Noticees.



**Directions:**

19. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B, read with of Section 19 of the SEBI Act, 1992, hereby direct that:

- (i) The Noticees shall within a period of three months from the date of coming into force of this Order, jointly and severally, refund the money received from the clients/investors/complainant, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;
- (ii) The Noticees shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this Order;
- (iii) The repayments to the clients/investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- (iv) The Noticees are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above;
- (v) ICICI Bank, Axis Bank and Central Bank of India wherein Cash Cow is holding accounts, are directed not to allow any debits/ withdrawals from and credits to the aforesaid accounts, except for debits for the purposes of the refunds as directed in para 19(i) above. ICICI Bank, Axis Bank and Central Bank of India are directed to ensure that all the above directions are strictly enforced;
- (vi) After completing the aforesaid repayments, the Noticees shall file a report of such completion with SEBI addressed to the Division Chief, CIS Division,

Investment Management Department, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 15 days, after completion of three months from the coming into force of this order, duly certified by an independent Chartered Accountant. The restraint contained in para 19(iv) and (v) shall cease to operate once the refund to the investors is complete and the report as contemplated herein is filed;

- (vii) In case of failure of the Noticees to comply with the aforesaid directions in sub-para (i) and (vi) above, SEBI, on the expiry of the stipulated time period therein may recover the amounts mentioned in para 18 above or any other amount, as may be found to have been raised by the Noticees, from the Noticees, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;
- (viii) The Noticee no. 2 is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 2 (two) years from the date of this order or till the expiry of 2 (two) years from the date of completion of refunds to investors as directed in paragraph 19(i) above, whichever is later. However, in view of the SEBI Order June 01, 2021 passed in the matter of M/s Capital Heed Financial Research (Proprietor Mr. Shailendra Sen) against Noticee no. 2, whereby debarment of 3 (three) years have been imposed on Noticee no. 2, the debarment passed vide this direction against Noticee no. 2, shall run concurrently with the debarment passed in the said Order dated June 01, 2021;
- (ix) The Noticees no. 1, 3 and 4 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 1 (one) year from the date of this order or till the expiry of 1 (one) year from the date of completion of refunds to investors as directed in paragraph 19(i) above, whichever is later.

- (x) The Noticee no. 2 is also 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 2 (two) years from the date of this order or till the expiry of 2 (two) years from the date of completion of refunds to investors as directed in paragraph 19(i) above, whichever is later;
- (xi) The Noticees no. 1, 3 and 4 are also 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 1 (one) year from the date of this order or till the expiry of 1 (one) year from the date of completion of refunds to investors as directed in paragraph 19(i) above, whichever is later; and
- (xii) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 19(viii) to (xi) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

20. The direction for refund, as given in paragraph 19(i) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

21. The order shall come into force with immediately, however, in view of the exceptional circumstances emerged due to the outbreak of a COVID-19 and consequential restrictions imposed in different parts of the country, the directions given in paragraph 19 except directions given in sub-paras 19(viii) to (xi), shall come into force within 30 days from the date of this order.

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

**Sd/-**

**Place: Mumbai**

**ANANTA BARUA**

**Date: January 18, 2022**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**