WTM/AB/WRO/ILO/07/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11, 11(4), 11B(1) and 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee No.	**Name of the entity**	**PAN No.**
1.	Investmart (Proprietor: Mr. Anshuman Bhise)	DYFPB1666H

1. The present proceedings have emanated from an ex-parte ad-interim order cum show cause notice dated February 7, 2020 (hereinafter referred to as "**the interim order**") passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") *inter alia* against Investmart and its sole proprietor Shri Anshuman Bhise, (hereinafter collectively referred to as "**the Noticees**"**)**, as the unregistered investment advisory activities of the Noticees were found to be in violation of the provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations, 2013**"). Further, in the interim order, the activities of the Noticees were *prima facie* found to be fraudulent and manipulative and in violation of provisions of Section 12A (a), (b) & (c) of SEBI Act, 1992 and Regulations 3 (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**). By the interim order, following directions were issued against the Noticees:

i *The Noticees 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 manner whatsoever, until further orders.*

ii *The Noticees shall not access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.*

iii *The Noticees shall not divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders.*

iv *The Noticees shall not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of assets held in their name, including money lying in bank accounts except with the prior permission of SEBI.*

v *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.*

vi *The Noticees shall provide a full inventory of all assets held in the name of the proprietorship or the proprietor and firm or the partner, 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 *Any person while working under the above mentioned Noticees as employee or otherwise, shall cease and desist from undertaking the activity of investment advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.*

viii *The Banks are directed not to allow any debits/ withdrawals from* ***or credits*** *to the accounts of the Noticees, held jointly or severally, without the permission of SEBI. The Banks are directed to ensure that all the above directions are strictly enforced.*

ix *The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of the Noticees held jointly or severally.*

x *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities, including Mutual Fund units, held in the name of the Noticees, jointly or severally, are not transferred or redeemed.*

2. The interim order was also in the nature of a show cause notice wherein 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. In this regard, it is noted that the Noticees have neither filed any reply/objections to the interim order nor sought any personal hearing. Hence, I shall now proceed to determine the matter *ex-parte* and on the basis of material available on record.

3. I find that the interim order passed in the matter contained following observations with respect to the Noticees:

(i) SEBI received a letter dated May 6, 2019 from Ms. Anju Sharma ('Complainant'), *inter alia*, alleging that she paid Rs.76,000/- to Investmart for Demat account opening. While opening the Demat account, Investmart, *inter alia*, informed the complainant that:

a. They will charge for handling Demat account and will take 20% of the profit.
b. Every month the details regarding transactions in Demat account will be sent on E-mail.
c. They will never trade without prior permission from the complainant.

(ii) Complainant further stated in her complaint that after the payment, Investmart showed that the complainant has incurred losses and closed her Demat account.

(iii) Along with the aforesaid letter, Complainant also attached the copy of print-out of website details of Investmart, documentation details sent via messages, screenshots of trade details carried out in her Demat account and bank account details of Investmart.

(iv) It was observed that the Complainant had made payment to Axis bank account of Investmart. Accordingly, necessary information were sought from Axis bank. Vide email dated July 4, 2019, Axis Bank, *inter alia*, forwarded the

KYC, AOF and account statement for Investmart. From information submitted by Axis Bank, the following observations are made:

(a) Anshuman Bhise is the proprietor / owner of the Investmart. He has furnished a copy of Aadhar Card, PAN Card and Business License to the Bank.
(b) In the account opening form of the Investmart, the type of account has been mentioned as 'Current' and the Nature of Business as 'Service Provider'.
(c) From the address proof submitted to the bank, it appears that Anshuman Bhise's address is 124/3, Nanda Nagar, Indore, Madhya Pradesh - 452011.

(v) From the Axis Bank account of Investmart, it is observed that around Rs.4,136,734/- have been credited during the period October 23, 2018 to July 3, 2019 in the said account. It is observed that numerous credits have been received with the narration of Investment and Trading.

(vi) A search on the internet made in the name of 'Investmart' showed its website as - https://www.investmart.info. It is seen from the website that Investmart advertises itself as an investment advisory company, providing recommendations in Stock Cash, F&O, Commodities including bullions, metals & agro-commodities, and assures more than 90% accuracy in its recommendations.

(vii) The website pages mention services in Equity, Commodity, Derivative, Forex and Customized Services as well as various other categories of services with different price ranges.

4. From the details of transactions processed through payment gateways, account statements of the relevant bank accounts, KYC records of bank accounts/ payment gateways, material available on the websites of the Noticees and the material submitted by the Complainant along with her complaint, interim order made the following *prima facie* observations:

a. Noticees are not registered as investment advisors with SEBI.
b. The Noticees have floated their website viz: www.investmart.info.
c. The activity of Noticees, through their website, of holding themselves out to

be giving advice / recommendation in relation to securities being traded in the securities market and / or also in relation to commodities and forex to the investors and general public, and payment receipts of the complainants indicating the payment was made for receiving investment advice, the bank statement *prima facie*, showing the credit *inter alia* for payment of fees, indicates that there is a preponderance of probability that Noticees, apart from holding themselves out as investment advisor(s), have acted as an investment advisor for consideration.

d. The website of the Noticees was live and running, as on the date of the interim order, and also reflect the bank account details/payment gateway through which the investors desirous of availing their services can make direct payment.
e. Payment gateways such as PayUmoney, Paytm, etc. and direct transfers to bank accounts reflected on the website were used for receiving payments *inter alia* towards subscription fee/product purchase from investors.
f. Continuous credits have been received in the accounts of these unregistered Noticees.

5. I note that the definition of investment adviser, as given in Regulation 2(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(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."

6. I note that Noticees on their website i.e. https://www.investmart.info advertised Investmart as an investment advisory company, providing recommendations in Stock Cash, F&O, Commodities including bullions, metals & agro-commodities, and assures more than 90% accuracy in its recommendations. The website pages mentioned that Noticees offer services in Equity, Commodity, Derivative, Forex

and Customized Services as well as various other categories of services with different price ranges. I note that following pricing details for availing various services were mentioned on the website of the Noticees:

	Monthly	**Quarterly**	**Half Yearly**	**Yearly**
Basic Stock Cash	8,500	28,000	28,000	46,000
Basic Stock Future	8,500	28,000	28,000	46,000
Basic Stock Options	8,500	28,000	28,000	46,000
HNI Stock Cash	8,500	28,000	28,000	46,000
HNI Stock Future	8,500	28,000	28,000	46,000
HNI Stock Option	8,500	28,000	28,000	46,000
Index Option	8,500	28,000	28,000	46,000
Index Future	8,500	28,000	28,000	46,000
BTST	8,500	28,000	28,000	46,000
Premium Stock Cash	8,500	28,000	28,000	46,000
Premium Stock Future	8,500	28,000	28,000	46,000
Premium Stock Option	8,500	28,000	28,000	46,000

From the aforesaid facts, I find that Investmart which is proprietorship concern of Shri Anshuman Bhise was engaged in giving advice relating to investing in,

purchasing, selling or otherwise dealing in securities or investment products, through its website www.investmart.info. I find that these services were being offered by the Noticees in lieu of the consideration which could be paid by the investor concerned in the Axis Bank Current Account No. 918020097535427 of Investmart maintained with Vijaynagar Branch, Indore, details of which were provided on the website. From the detail of the said bank account, I note that total of Rs. 4,136,734/- have been credited during the period October 23, 2018 to July 3, 2019 in the said account. I note that numerous credits in the said bank account were received with the narration "Investment and Trading". In view of this, I find that Noticees were providing the investment advice, in lieu of consideration. In terms of Regulation 2(l) of IA Regulations, 2013 such an advice is "investment advice". Therefore, I find that Investmart and its proprietor Shri Anshuman Bhise 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(m) of the IA Regulations, 2013.

7. 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:"*

8. 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,

safeguards provided under IA Regulations, 2013 includes continued minimum professional qualification and net-worth requirement for investment adviser, 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.

9. 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. However, it is noted that the Noticees is 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.

10. In my view, unregistered investment advisors like the Noticees in the present case can put investors at great risk by misleading them. In the present case, Noticees on their website mentioned that Investmart is an investment advisory company, providing recommendations in Stock Cash, F&O, Commodities including bullions, metals & agro-commodities. Noticees further mentioned on their website that they assure more than 90% accuracy in their recommendations. The website pages mentioned that Noticees offer services in Equity, Commodity, Derivative, Forex and Customized Services as well as various other categories of services with different price ranges. As stated above, SEBI Act, 1992 and IA Regulations, 2013 requires any investment advisor to hold a certificate of registration to act as such. I find that Noticees were not holding any certificate of registration from SEBI to act as investment adviser. Thus, the claims/representations made by the Noticees on their website were misleading and were made to allure investors to avail investment advisory services being offered by the Noticees. The Noticees have knowingly misrepresented on the websites floated by them that they are experts in stock market analysis and are experienced in investment advisory. Without holding any registered Investment Advisor certificate, the Noticees have held themselves out as

investment advisors and offered services through their website to investors with the objective of raising money through subscriptions to their various plans. The above discussed misleading representations are deceptive activities of the Noticee and therefore, fraudulent and are covered within the definition of "fraud" defined under Regulation 2(1)(c) of the PFUTP Regulations, 2003. It is noted that fraudulent activities/ conduct/ act/ practice of the Noticees, as discussed above, are also in violation of provisions of Section 12A (c) of SEBI Act, 1992 and Regulations 3(d) and Regulations 4(1) of PFUTP Regulations, 2003. 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 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, Noticees without holding certificate of registration as investment adviser, knowingly hold themselves as investment adviser on their website. Thus, I find that Noticees have also violated Regulations 4(2)(k) of PFUTP Regulations, 2003.

11. I note that the material available on record does not indicate the exact amount of fees collected by the Noticees, as a result of providing investment advice to investors, in violation of the provisions of the IA Regulations, 2013. However, interim order records that one complaint was received against the Noticees wherein the complainant had claimed that she had paid an amount of Rs. 76,000/- to the Noticees, for availing investment advisory services from them.

12. In view of the foregoing, 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, and in supersession of the directions in the interim order, hereby direct that:

    (i) The Noticees shall within a period of three months from the date of this order, refund the money received from the clients/investors/ complainants, 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 demit 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 Noticees, as directed in this order, from the bank account of the Noticees, wherein debit has been frozen by virtue of interim order dated February 07, 2020;

(v) 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;

(vi) In case of failure of the Noticees to comply with the aforesaid directions in sub-para (i) and (v), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover the amounts mentioned in para 11 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;

(vii) The Noticees 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 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 12(i) above, whichever is later;

(viii) The Noticees 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 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 12 (i) above, whichever is later; and

(ix) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 12(vii) and (viii) 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.

13. The direction for refund, as given in paragraph 12(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.

14. This order comes into force with immediate effect.

15. 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.

Place: Mumbai **ANANTA BARUA**

Date: May 19, 2021 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA