BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-4/SRP/AE/AO/2018-19/13]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Ms. Archana Matta (PAN BECPS4207N)

In the matter of Unregistered Investment Advisory Services

BACKGROUND

1. The Securities and Exchange Board of India (*hereinafter referred to as "**SEBI**"*), initiated adjudication proceedings against certain entities as upon examination it was, *prima facie*, observed that they are providing unregistered investment advisory services in the securities market. In this regard, it was alleged that one Ms. Archana Matta (hereinafter to as "**Noticee**") by indulging in unregistered investment advisory services as stated above, has violated the provisions of Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 and Section 12(1) of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

2. Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer **(AO)** vide SEBI's Order dated October 27, 2017 to inquire into and adjudge under Section 15HB of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee. Consequent to the transfer of Shri Biju S. the undersigned was appointed as AO in the present matter vide Order dated July 06, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated June 28, 2018 (*hereinafter referred to as '**SCN**'*) was issued to the Noticee in terms of Section 15 I of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "***Rules***") for the violations alleged to have been committed by the Noticee, as specified in the SCN.

4. Vide letter dated July 23, 2018, the Noticee submitted reply to the SCN. Her main submissions are reproduced hereunder –

   i. *I was never a part of advisory services which was running under the name of Everon Research and Consultancy Pvt Ltd, getResearch & Research4u.*
   ii. *In the month of Nov'14, Directors of Everon Research and Consultancy Pvt Ltd. contacted me to use my Axis bank account to receive few payments of their advisory clients who were adamant to transfer advisory fee only in Axis Bank account. As the Directors of Everon Research was under the impression that a chartered accountant is exempt from SEBI Investment Advisor registration guidelines, they contacted me to use my personal Axis bank account to which I denied initially. However, after insisting me, I agreed for limited use in good faith and suggested them to open their advisory account with the Axis Bank on priority basis. With this, they used my Axis Bank account for the next two months.*
   iii. *However, looking at the frequency of advisory receipts in my Axis Bank account, I had obtained a legal advice and learnt the mandatory need of SEBI registration certificate even for a qualified chartered accountant. I conveyed it to the Directors of Everon Research and asked them to immediately stop using my personal bank account for advisory purpose to which they agreed. However, it took them a few more months to stop that completely as till Jun'15 few repeat customers had transferred money into my account unknowingly with this development.*
   iv. *Regarding ICICI bank account, I would like to clearly mention that bank accounts with ICICI Banks are in no way related to me. ICICI bank account statement shows the username of "Archana" is mere a coincidence. Not sure, but maybe someone at entry level bank staff has rename user id to "Archana".*
   v. *I have also returned the entire amount received as advisory fees in my personal Axis Bank account to the Everonn Research as per their instructions.*
   vi. *I would again like to bring in your kind attention that I have never been associated with advisory services which are used to operate under the name of EveronResearch and Consultancy Pvt Ltd, getResearch, and Research4u. I have only allowed the concern team in good faith to use my personal Axis bank account to receive the payments that too for short span of time of their advisory services*

vii. *I am extremely regretful for this act which occurred due to my negligence and also understands its larger implications of this error from the perspective of regulator and public at large.*

viii. *I am considering this as most crucial learning of my life and ensure you that such sort of activities will never be repeated.*

ix. *I humbly request you to condone this act which happened due to my ignorance of respective regulations pertaining to SEBI Investment Advisors.*

5. Pursuant to appointment of the undersigned as AO, an opportunity of Personal Hearing was granted to the Noticee on August 08, 2018. However, vide e-mail dated August 07, 2018, the Noticee requested for an adjournment of the aforesaid hearing. Considering the same, the Noticee was granted one more opportunity of personal hearing on August 20, 2018. The Noticee appeared for the hearing on August 20, 2018 and reiterated the submissions made vide her reply dated July 23, 2018. During the personal hearing she made the following additional submissions -

- *During period 2007-2009, she was an employee of Swastika Investmart Ltd and later she was acting as a consultant to them.*
- *She is not associated with Everon Research and Consultancy Pvt Ltd ('Everon') & others, and that the ICICI bank account annexed with the SCN does not belong to her. Regarding her Axis Bank account, the Noticee submitted that she has transferred the amounts as per the instructions from Everon. The Noticee further submitted that apart from the above, her Axis Bank account also reflects consultancy fees payments from Swastika Investmart Ltd and also fees received from her other clients.*

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully examined the submissions of the Noticee and material available on record. The issues that arise for consideration in the present case are :

a. Whether the Noticee has violated the provisions of Regulation 3(1) of the SEBI (Investment Advisors) Regulations, 2013 and Section 12(1) of the SEBI Act, 1992?

b. Does the violation, if established, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

c. If yes, then what should be the quantum of penalty?

FINDINGS

7. Before I proceed with the matter, it is pertinent to mention the relevant provisions of the Act/Regulations alleged to have been violated by the Noticees. The same are reproduced below:

SEBI (Investment Advisers) Regulations, 2013

Application for grant of certificate.

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:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation(2) within the said period of six months, till the disposal of such application.

SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12 (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have

been obtained from the Board in accordance with the regulations providing for such registration. (2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations. (3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations: Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

8. It has been alleged in the SCN that unregistered advisory services were being provided by certain entities. Subsequently, on examination, it was observed that messages (SMSes) were circulated from the ID: DM-RESRCH mentioning the contact number as 6688032, 6688098, and 6688084. It was also observed that some of the messages were received from the mobile number 9039060777. It was further observed that the number belonged to a website: Research4U. It was observed that the said SMSes also mentioned the bank account details of Archana Matta (i.e. the Noticee) in Axis Bank, and of another entity viz. Everon Research and Consultancy Ltd in ICICI Bank and State Bank of India.

9. Regarding the website 'Research4U', it was observed that in the 'About' (Research4U) webpage hosted by wordpress.com having page ID *https://research4ustock.wordpress.com/about/* the following was mentioned – "*Research 4U is an investment and trading advisory company which mainly provides recommendations for securities traded in cash and F&O segments of BSE and NSE, commodities traded in MCX and NCDEX, currency traded in FOREX market*". It was also observed by SEBI that the main website of Research4U was subsequently no longer available, and clicking on the website address: *www.research4u.in* lead to the website of getResearch which indicated apparent relationship between the two entities. It was also observed that the name of the contact person mentioned in the website of getReseach (http://www.getresearch.in/) is of Archana Matta i.e. the Noticee.

10. From the materials available on record, I note that vide the Noticee's letter dated June 20, 2015 to a trading member, namely Swastika Investmart Ltd. ('Swastika'), the Noticee has stated that she used to provide investment advisory services to few of her

clients using the setup of Swastika. In the said letter she has further stated that such activities of her were unintentional and that Chartered Accountants are exempt from the requirement of SEBI registration for providing investment advisory services, and that they can provide such advisory services to their clients without getting themselves registered with SEBI. She has also stated that she had stopped advisory services with immediate effect.

11. I also note that Swastika vide its letter dated June 24, 2015 to SEBI (received on June 25, 2015), has informed that the Noticee was associated with them as a consultant and was providing unregistered advisory services using their infrastructure and setup. Swastika has also informed that, due to the aforesaid, they have issued a warning letter as well as filed a police complaint dated June 23, 2015 against the Noticee.

12. From the materials available on record, I note that vide her letter dated July 10, 2015 to SEBI, the Noticee informed that the investment advisory services were strategically and operationally managed by a company viz. Everon Research Pvt. Ltd. ('Everon') and that due to her obliviousness of applicable SEBI provisions, her bank account and other details were used for some time by Everon. She further stated that the director of Everon had approached her in December 2014 to use her details mentioning that Chartered Accountants are exempted from registration requirement and can offer investment advisory services without obtaining registration certificate from SEBI. The Noticee had stated that such acts of her occurred due to her negligence / ignorance.

13. I note that the Noticee in her reply dated July 23, 2018 to the SCN, had contended that the ICICI bank account statement annexed with the SCN does not belong to her. From the materials available on record, I find that the said account belongs to Everon and not to the Noticee.

14. In response to the SCN, vide letter dated July 23, 2018, the Noticee has submitted that she was not part of the advisory services which were carried out by other entities such as Everon), getResearch and Research4u. In this regard, from the materials available on record, I note that in her letter dated June 20, 2015 to Swastika, the Noticee had stated that she used to provide investment advisory services to a few of

her clients using the setup of Swastika (described in previous paragraph 10). I further note from the SCN, that Swastika had vide its letter dated June 24, 2015 to SEBI had stated that as the Noticee was providing unregistered advisory services using their infrastructure and setup, and that in this regard they had filed a police complaint dated June 23, 2015 against the Noticee. In the matter, I note that the Noticee has not furnished any documentary evidence refuting the aforesaid action /allegations of Swastika.

15. I further note that the Noticee in her reply dated July 23, 2018 to the SCN, had submitted that – "*In the month of Nov'14, Directors of Everon Research and Consultancy Pvt Ltd. contacted me to use my Axis bank account to receive few payments of their advisory clients who were adamant to transfer advisory fee only in Axis Bank account. As the Directors of Everon Research were under the impression that a chartered accountant is exempt from SEBI Investment Advisor registration guidelines, they contacted me to use my personal Axis bank account to which I denied initially. However, after insisting me, I agreed for limited use in good faith and suggested them to open their advisory account with the Axis Bank on priority basis*". From the above, I note that the Noticee has admitted that she had lent her bank account in Axis Bank to be used for receiving the funds from clients for investment advisory services.

16. As per the provisions of the SEBI (Investment Advisers) Regulations, 2013, I note that Members of the Institute of Company Secretaries of India, Institute of Chartered Accountants of India, Institute of Cost and Works Accountants of India, who provide investment advice to their clients incidental to their professional services are exempted from obtaining registration under the aforesaid regulations. As an example, an advice by a professional Chartered Accountant as a tax consultant to his tax client for investing in ELSS in the course of tax planning will be treated as incidental to his profession as a tax consultant. However, it may be noted that if the aforesaid professionals are engaged in providing investment advisory services in securities as an activity or business to clients or investors which is not incidental to their main activity then they are required to get registration as an investment adviser. In the present case,

the Noticee was found to be receiving funds for investment advisory activities from clients in her Axis Bank account. The Noticee in her reply to the SCN has also stated "*.. looking at the frequency of advisory receipts in my Axis Bank account, I had obtained a legal advice and learnt the mandatory need of SEBI registration certificate even for a qualified chartered accountant".*

17. I note that the Noticee has submitted in her reply to the SCN that *"..I have never been associated with advisory services which are used to operate under the name of EveronResearch and Consultancy Pvt Ltd, getResearch and Research4u. I have only allowed the concerned team in good faith to use my personal Axis bank account to receive the payments that too for short span of time of their advisory services"*. From the above, I note that the Noticee has admitted that she has allowed her bank account to be used for receiving the funds from clients in lieu of investment advisory services. I also note that the Noticee has also admitted that SEBI registration certificate is mandatory for engaging in investment advisory services, even for a qualified chartered accountant, and that she didn't possess one. Further, the submission by the Noticee that she had allowed others to use her bank account (to receive the funds for investment advisory services) in good faith is untenable, especially considering that she is a qualified Chartered Accountant, and as such should be aware of the gravity of such actions. In view of the above, I hold that the Noticee was involved in unregistered advisory services despite not having a certificate of registration for the same, and has thus violated the provisions of Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 and Section 12(1) of the SEBI Act, 1992

Issue b) Does the violation, if established, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

18. Regarding the alleged violations, the Noticee has submitted that her act happened due to her ignorance of respective regulations pertaining to SEBI Investment Advisors. However, I am of the view that ignorance of law cannot be considered as an excuse. Therfore, I hold the Noticee liable for the violations as specified in the SCN. Further, in this regard, I note that the Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund held that –

"*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

19. Therefore, I am of firm opinion that the violations of Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 and Section 12(1) of the SEBI Act, 1992 make the Noticee liable for penalty under the provisions of Section 15HB of the SEBI Act, 1992, which reads as under :

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Issue c) : If yes, then what should be the quantum of penalty?

20. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Rules, require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

21. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. However, I find it pertinent to mention that the objective of registration is to protect the interests of the investors. Registration casts accountability and

responsibility upon the registered investment adviser to comply with all regulatory requirements applicable to the conduct of its business activity and it also promotes the best interests of the clients and integrity of the market. From the reply of the Noticee, I note that the Noticee despite not obtaining the certificate of registration from SEBI, was involved in investment advisory services, and the same is in disregard to the provisions of Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 and Section 12(1) of SEBI Act, 1992.

ORDER

22. After taking into consideration all the facts and circumstances of the case, the material on record and the factors stipulated in Section 15 J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15 I of the SEBI Act, 1992 read with Rule 5 of the Rules impose a penalty of Rs.2,00,000/- (Rs. Two lakh only) on the Noticee viz. Ms. Archana Matta, in terms of the provisions of Section 15 HB of the SEBI Act, 1992 for the violations of Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 and Section 12(1) of the SEBI Act, 1992.

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

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	

5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

24. In terms of the Rule 6 of the Rules, copy of this Order is sent to the Noticee and also to Securities and Exchange Board of India.

Place: Mumbai **Satya Ranjan Prasad**

DATE: September 27, 2018 **Adjudicating Officer**