QJA/PR/WRO/WRO/23193/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of

Sr. No.	Name of the Noticee	SEBI Registration No.
1.	M/s Capital Stars Financial Research Private Limited	INA000001647

In the matter of M/s Capital Stars Financial Research Private Limited

1. The present proceeding is originating from the Enquiry Report dated September 30, 2022, submitted by the Enquiry Officer/ Designated Authority (hereinafter referred to as "**DA**"), in terms of the applicable provisions of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred as "**Intermediaries Regulations**"). The DA, based on various factual findings and observations so recorded in the said Enquiry Report, has recommended that M/s Capital Stars Financial Research Private Limited (hereinafter referred to as "***Noticee***") may be prohibited from taking up any new assignment or contract or launch a new scheme for a period of three months.

2. The aforesaid Enquiry Report was submitted pursuant to an enquiry proceeding initiated based on the findings of certain facts unearthed in the course of an inspection conducted by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") into the affairs of the *Noticee*. SEBI had conducted an inspection of the books of accounts, records and other documents of the *Noticee* for the period of April 1, 2018 to January 31, 2020 (hereinafter referred to as "**inspection period**") in order to examine the compliance of various requirements under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), Regulations, and Circulars/ Directions issued thereunder.

3. Based on the findings of the said inspection, a DA was appointed to inquire into and to submit a report pertaining to the probable violations of the following provisions:

    a. Regulations 7(1), (2), 15(1), 15(9), 15(13), 16(a), (b), (d)(i) & (ii), (e), 17(a), 19(1) and 19(2) and Clauses 1, 2, 4, 5, 6 and 9 of the Code of Conduct, Schedule III

of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "**IA Regulations**");

b. Regulation 7(2) of the Securities and Exchange Board of India (Research Analysts) Regulations, 2014 (hereinafter referred to as the "**RA Regulations**");

c. Regulations 2(1)(c), 3(a), (b), (c) and (d), 4(1) and 4(2)(s) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as the '**PFUTP Regulations**');

d. Clause 2.4 of the SEBI Circular No. CIR/MIRSD/2/2014 dated March 12, 2014 (hereinafter referred to as the "**2014 Circular**");

e. SEBI Circular No. SEBI/HO/MIRSD/DOP/CIR/2019/113 dated October, 2019 (hereinafter referred to as "**2019 Circular**");

f. Clause 1(i) of the SEBI Circular SEBI/ HO/IMD/DF1/CIR /P/2019/169 dated December 27, 2019 (hereinafter referred to as "**IA Circular**")

4. The DA issued a show-cause notice dated April 05, 2022 to the *Noticee* under regulation 25(1) of the Intermediaries Regulations advising the *Noticee* to submit its reply, if any, within 21 days of receipt of the notice, together with the copies of the documents, if any, that it may choose to rely upon to support its contentions, failing which it shall be presumed that the *Noticee* has no reply to submit and the matter shall be proceeded on the basis of the material available on record. The irregularities brought in the aforesaid inspection and the allegations levelled in the show-cause notice issued by the DA have been reproduced hereunder in brief-

a. the *Noticee* failed to carry out risk profiling of the clients in terms of regulation 16 of the IA Regulations;

b. the Risk Profiling Form adopted by *Noticee* for the period after September, 2019 had leading and vague questions;

c. the *Noticee* did not collect the supporting documents from the clients for the purpose of risk profiling in terms of regulation 16(a) of the IA Regulations;

d. the *Noticee* did not communicate the risk profile and the suitability assessment to the clients in terms of regulation 16(e) of the IA Regulations;

e. the *Noticee* has failed to do risk profiling for 3 (three) clients out of a sample of 40 (forty) clients and has collected advisory fees from 22 clients, before carrying out risk profiling of the clients, in alleged violation of regulation 17(a) of the IA Regulations;

f. the *Noticee* charged unfair/ arbitrary fees which was disproportionate to the annual income/ proposed investment amount of the clients;
g. the *Noticee* sold same advisory product/ service to its clients on multiple occasions and charged fees for the same before the completion of the tenure of the previous service;
h. the *Noticee* did not maintain proper record relating to KYC, risk profiling, suitability assessment of the advice being rendered to the clients, as mandated by regulation 19 of the IA Regulations;
i. the *Noticee* did not update its Anti-Money Laundering Policy in terms of 2019 Circular and has failed to appoint a Designated Director, in terms of the 2014 Circular;
j. the *Noticee* was providing free trials to its prospective clients in violation of the IA Circular;
k. the employees of *Noticee* were providing investment advice to the clients without having the requisite qualification in terms of the IA Regulations;
l. the *Noticee* published research reports/ call sheets, generated by other entities, as outcome of in-house research and has employed 11 (Eleven) people as research analysts without them having the adequate certifications as is required under regulation 7 of the RA Regulations;
m. the *Noticee* provided false/ wrong information to SEBI in respect of its Compliance Officer;

In response to the aforesaid allegations, the *Noticee*, vide its letter dated August 17, 2022 submitted a detailed reply to the aforesaid show-cause notice. Pursuant to the receipt of the said reply, an opportunity of personal hearing was granted to the *Noticee* on August 22, 2022 and the same was attended by the *Noticee* virtually, through its directors, namely Mr. Amit Sharma and Mr. Abhishek Upadhyay.

5. After considering the allegations levelled in the show-cause notice, reply filed by the *Noticee* and the submissions made by the *Noticee* during the personal hearing, the DA, has made the following recommendation:

"In view of the above observations, as per Regulation 26 (1) (iv) of Intermediaries Regulations, it is recommended that Capital Stars Financial Research Pvt. Ltd. may be prohibited from taking up any new assignment or contract or launch a new scheme for a period of three months."

(**emphasis supplied**)

6. After considering the Enquiry Report, a Post Enquiry Show Cause Notice dated October 17, 2022 (hereinafter referred to as "**SCN**") enclosing therewith the Enquiry Report of the DA, was issued to the *Noticee* under regulation 27(1) of the Intermediaries Regulations calling upon to show cause as to why action as recommended by the DA or any other action including passing of appropriate other directions, as deemed appropriate by the Competent Authority, should not be taken against the *Noticee*. The SCN further advised the *Noticee* to submit its reply, if any within 21 days of receipt of the said SCN, failing which it shall be presumed that the *Noticee* has no reply to submit.

7. I note that the SCN was delivered to the *Noticee* and the proof of delivery is on record. Pursuant to the same, the *Noticee*, vide its letter dated November 6, 2022 (hereinafter referred to as "**the reply**"), submitted its reply to the SCN. The reply submitted by the *Noticee* is summarized as under for ready reference:

    i. the *Noticee* used to send an email containing the risk assessment form and KYC of the client and the clients were asked to revert through mail as to whether the client agrees with the shared information and whether the same is true and thus, the clients were aware about their Risk Profile Management (hereinafter referred to as the "**RPM**") and KYC and the services were started only after obtaining client's consent;
    ii. the *Noticee* used to offer discount and flexibility in payment schedule to the clients who opted for services of longer duration and the services were started only after RPM and the KYC process and after receipt of first installment of the fees. In such cases, if required, the *Noticee*, re-does the RPM before the receiving the complete payment and the latest RPM is taken as the final RPM. This revising of the RPM has led to confusing the inspecting authority that the RPMs were being done after hundred days of starting the service;
    iii. the *Noticee* has not charged exorbitant fees as there was no limit specified by SEBI prior to inspection of the *Noticee*. Further, the clients were not forced to make multiple payments rather they were given a duration before which the clients had to make the entire payment;
    iv. the *Noticee* has submitted the data pertaining to the KYC, risk profiling and suitability assessment to the inspecting authority but since the *Noticee* did not keep the call records with the clients, the *Noticee* could not furnish the proof relating to the call records;
    v. the advice to the clients was provided only by the research team and not by any other individual;

vi. the *Noticee* has not undertaken any new assignment or contract for a period of three months and have not taken a new client for the past one year.

8. In terms of the Intermediaries Regulations, it is not necessary for the Competent Authority to give the *Noticee*, any opportunity of personal hearing, if neither the Designated Authority has recommended cancelation of certificate of registration nor the Competent Authority is of the *prima facie* view that it is a fit case for cancellation of certificate of registration. However, since the *Noticee* had requested for an opportunity of personal hearing, in the interest of principles of natural justice, an opportunity of personal hearing was provided to the *Noticee* on January 12, 2023. On the scheduled day, the hearing was held through video conferencing (Webex) wherein the directors of the *Noticee*, namely, Mr. Amit Sharma, Mr. Anirudh Yadav and Mr. Abhishek Upadhyay, appeared and made oral submissions on the lines of their earlier reply dated November 06, 2022. The *Noticee* was given one week's time to file further written submissions, if any. It is noted from the material available on record that the *Noticee* has not filed any post hearing submissions in the matter.

CONSIDERATION OF ISSUES

9. I have carefully perused the SCN including the Enquiry Report issued to the *Noticee* and other material available on record. The issues which arise for my consideration in the present proceeding are as under: -

I. Whether:

a. the *Noticee* failed to carry out risk profiling of the clients in terms of regulation 16 of the IA Regulations;
b. the Risk Profiling Form adopted by the Noticee for the period after September, 2019 had leading and vague questions;
c. the *Noticee* did not collect the supporting documents from the clients for the purpose of risk profiling in terms of regulation 16(a) of the IA Regulations;
d. the *Noticee* has not communicated the risk profile and the suitability assessment to the clients in terms of regulation 16(e) of the IA Regulations;
e. the *Noticee* has failed to do risk profiling for 3 (three) clients out of a sample of 40 (forty) clients, collected advisory fees from 22 clients, before carrying out risk profiling of the clients, in alleged violation of regulation 17(a) of the IA Regulations;

f. the *Noticee* has charged unfair/arbitrary fees which was disproportionate to the annual income/ proposed investment amount of the clients;

g. the *Noticee* has sold same advisory product/service to its clients on multiple occasions and charged fees for the same before the completion of the tenure of the previous service;

h. the *Noticee* has not maintained proper record relating to KYC, risk profiling, suitability assessment of the advice being rendered to the clients, as mandated by regulation 19 of the IA Regulations;

i. the *Noticee* has not updated its Anti-Money Laundering Policy in terms of SEBI Master Circular dated October 15, 2019 and has failed to appoint a Designated Director, in terms of the SEBI Circular dated March 12, 2014;

j. the *Noticee* has been providing free trials to its prospective clients in violation of SEBI Circular dated December 27, 2019;

k. the employees of the *Noticee* have been providing investment advice to the clients without having the requisite qualification in terms of the IA Regulations;

l. the *Noticee* has published research reports/ call sheets, generated by other entities, as outcome of in-house research and has employed 11 (Eleven) people as research analysts without them having the adequate certifications as is required under regulation 7 of the RA Regulations;

m. the *Noticee* has provided false/ wrong information to SEBI in respect of its Compliance Officer.

10. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions of the law, which are alleged to have been violated by the *Noticee* and the same are reproduced below for ease of reference:

> ***A. "The SEBI Act, 1992***
> ***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***
> *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;

B. <u>The IA Regulations</u>

Qualification and certification requirement

7(1) An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:

(a) A professional qualification or post-graduate degree or post graduate diploma 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

(b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.

(2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

(a)from NISM; or

(b)from any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India provided that such certification is accredited by NISM.:

Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:

Risk profiling

16. Investment adviser shall ensure that, -

(a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following: -

(i)age;

(ii)investment objectives including time for which they wish to stay invested, the purposes of the investment;

(iii)income details;

(iv)existing investments/ assets;
(v)risk appetite/ tolerance;
(vi)liability/ borrowing details.

(b) it has a process for assessing the risk a client is willing and able to take, including:
(i) assessing a client's capacity for absorbing loss;
(ii)identifying whether client is unwilling or unable to accept the risk of loss of capital;
(iii)appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

(c)where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;

(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:

(i)questionnaire is not vague or use double negatives or in a complex language that the client may not understand;
(ii)questionnaire is not structured in a way that it contains leading questions.

(e)risk profile of the client is communicated to the client after risk assessment is done;

(f)information provided by clients and their risk assessment is updated periodically.

Suitability.

17. Investment adviser shall ensure that, -
(a)All investments on which investment advice is provided is appropriate to the risk profile of the client;

Schedule III - Code Of Conduct For Investment Adviser

1.Honesty and fairness

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

2.Diligence

An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

4.Information about clients

An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

6.Fair and reasonable charges

An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

9.Responsibility of senior management

The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

Maintenance of records.

19.(1) An investment adviser shall maintain the following records,-

(a) Know Your Client records of the client;
(b)Risk profiling and risk assessment of the client;
(c)Suitability assessment of the advice being provided;
(d)Copies of agreements with clients, if any;
(e)Investment advice provided, whether written or oral;
(f)Rationale for arriving at investment advice, duly signed and dated;
(g)A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

C. The PFUTP Regulations, 2003

Regulation 2(1)(c)

(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;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(a) the economic policy of the government
(b) the economic situation of the country
(c) trends in the securities market or
(d) any other matter of a like nature

whether such comments are made in public or in private;

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.

Prohibition of manipulative, fraudulent and unfair trade practices

4(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.
Explanation.–For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: —

(s) mis-selling of securities or services relating to securities market

D. <u>The RA Regulations</u>

Qualification and certification requirement.

7(2). An individual registered as research analyst under these regulations, individuals employed as research analyst and partners of a research analyst, if any, shall have, at all times, a NISM certification for research analysts as specified by the Board or other certification recognized by the

Board from time to time:

Provided that research analyst or research entity already engaged in issuance of research report or research analysis seeking registration under these regulations shall ensure that it or the individuals employed by it as research analyst and/or its partners obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.

E. SEBI Master Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113

1.3.2.2 To be in compliance with these obligations, the senior management of a registered intermediary shall be fully committed to establishing appropriate policies and procedures for the prevention of ML and TF and ensuring their effectiveness and compliance with all relevant legal and regulatory requirements. The Registered Intermediaries shall:

1.3.2.2 (c) regularly review the policies and procedures on the prevention of ML and TF to ensure their effectiveness

F. SEBI Circular CIR/MIRSD/1/2014

In addition to the existing requirement of designation of a Principal Officer, the registered intermediaries shall also designate a person as a 'Designated Director'."

Having reproduced the relevant/ applicable provisions, I deem it fit to deal with the issues framed above at paragraph 9. In this regard, I note that the *Noticee* has filed its submissions to the SCN vide letter dated November 06, 2022. On perusal of the said letter, I observe that the *Noticee* has only responded to allegations levelled at Para 9(I)(d), (e), (g), (h) and (k) above and the reply submitted by the *Noticee* does not provide any explanation/ defense to the other allegations which have been levelled against the *Noticee* in the SCN. Accordingly, I deem it fit to first deal with the submissions made by the *Noticee* in respect of the allegations levelled against it.

I. Whether the Noticee has not communicated the risk profile and the suitability assessment to the clients in terms of regulation 16(e) of the IA Regulations;

11. It is noted from the material available on record that the *Noticee* is alleged to have violated regulation 16(e) of the IA Regulations by failing to communicate the risk profile to its respective clients. I note that the *Noticee*, during the course of inspection, has submitted that the risk profile and suitability assessment is forwarded at the time of sending the welcome email to the client. In this regard, out of a sample of 40 (forty) clients, examined during the inspection conducted by SEBI, it was observed that *Noticee* did not send the said welcome email to 17 (seventeen) clients and further, *Noticee* failed to produce any

documentary evidence confirming receipt of the risk profile and suitability assessment form in respect of remaining 23 (twenty-three) clients. In this regard the Enquiry Report has, *inter alia*, observed that the risk profile of the clients did not bear the signatures of the clients and the same were cropped from the PAN card of the client or from the emails sent by the clients.

12. In response to the above observation in the Enquiry Report, the *Noticee* in its reply dated November 06, 2022 has submitted that it used to send emails to the clients with the risk assessment form and the KYC details enclosed therein and the services were started only after obtaining the consent of the client. I note that the *Noticee* has not addressed the observations made against it in the Enquiry Report in detail and has merely reiterated that a welcome email was sent to the clients. The *Noticee* has not made any submission as to why the signature of the clients were cropped from images of the PAN card and why the welcome email was not sent to all the clients. The process of risk profiling and communication thereof to the clients is an essential aspect of investment advisory realm. The said process not only shines the light on the transparency between the clients and the investment adviser but also enables the clients/ investors to stay in loop as regard to the appropriateness of the services being offered to them. In the present case, in my opinion, the said requirement of law under the IA Regulations, has not been followed in letter and in spirit by the *Noticee*. Accordingly, I am of the view that in absence of any substantial evidence/ material to counter the observations made in the Enquiry Report, the submissions made by the *Noticee* cannot be accepted.

II. Whether the Noticee has failed to do risk profiling for 3 (three) clients out of a sample of 40 (forty) clients and collected advisory fees from its clients, before carrying out risk profiling of the clients, in alleged violation of regulation 17(a) of the IA Regulations;

13. It was alleged that out of the sample of 40 (forty) clients, the *Noticee* has failed to do risk profiling for 3 (three) clients and has provided investment advice and charged advisory fees without doing risk profiling of the clients. It was further alleged that the Risk Profile Forms of 37 (thirty-seven) clients were not signed by the *Noticee*, raising suspicion on the authenticity of the profiling done by the *Noticee*. The Enquiry Report, I note, has observed that the *Noticee* has not furnished any evidence in order to support the blanket denial of the allegations made by the *Noticee*.

14. In this regard, in its reply before the undersigned, the *Noticee* has submitted that upon being offered service for a large duration, the client was offered flexibility in the payment schedule and accordingly, the services for the clients were started only after receipt of first

instalment of the fees, KYC process and the RPM. Further, wherever required, the RPMs were revised before the final payment and the revised RPMs were taken as the final RPMs which has caused confusion leading the inspecting authority to believe that the services were started before the risk profiling of the client.

15. At the outset, I observe that the *Noticee* has not addressed the allegations pertaining to failure on its part to conduct risk profiling for 3 (three) clients. As regard the submission of the *Noticee* that the services were provided to the clients after receipt of first installment, KYC details and the RPM but the RPM was revised after the services being started, I note that the *Noticee* has not backed its claim with any evidence which supports the submissions of the *Noticee* that the risk profiling and suitability assessment, in terms of the IA Regulations, was carried out by the *Noticee* before initiating the advisory services to its clients. Although the *Noticee* has submitted that the risk profiling was done prior to providing services, in the absence of any evidence to substantiate the said claim, I am inclined to reject the submission of the *Noticee*.

III. Whether the Noticee has sold the same advisory product/service to its clients on multiple occasions and charged fees for the same before the completion of the tenure of the previous service;

16. I observe that as per the Inspection Report, the *Noticee* is also alleged to have sold the same products/ services to the same clients before the completion of the tenure of the previous service. Further, in case of some clients, advisory fee was allegedly charged multiple times for one single service even before the expiry of duration of that service. Further, the invoices provided to clients by the *Noticee* did not have any mention of tenure of service for which advisory fees was charged by the *Noticee*. This allegedly results in lack of transparency between an investment adviser and the clients, and clients do not know the period for which they have paid advisory fees to the investment adviser.

17. In this regard, the Enquiry Report has observed that, the *Noticee*, has submitted a general explanation without any substantiation or evidence such as providing copies of the plan for which the respective clients had subscribed to and copies of details of the fee that were provided to the client.

18. In this regard, the *Noticee*, in its reply dated November 06, 2022 has submitted that the fee charged by the *Noticee* cannot said to be exorbitant in absence of any limit specified by SEBI. Further, the clients were given an option to pay the fees in instalments which justifies the scenario of multiple payments in short duration.

19. I have perused the arguments put forth by the *Noticee* and I note that in the absence of any material/ evidence to support its contentions, the *Noticee's* submissions cannot be taken into consideration. The *Noticee* claims to have taken the fees in instalments by giving an option to its clients but has failed to submit any proof in this regard. At this juncture, I observe that the omission of tenure of service from the invoices issued to the clients also plays against the *Noticee*. If the *Noticee*, while issuing the invoices, had mentioned the tenure of service for which the payment is being made, the aforesaid contention of the *Noticee* with respect to the clients paying multiple payments for the same period could have been taken under consideration. Accordingly, in view of the lack of evidence to support its claims, the contentions of the *Noticee* are not tenable in law.

IV. ***Whether the Noticee has not maintained proper record relating to KYC, risk profiling, suitability assessment of the advice being rendered to the clients, as mandated by regulation 19 of the IA Regulations***;

20. In respect of the aforesaid issue, I observe that as per the Inspection Report, the *Noticee* failed to provide records pertaining to suitability assessment, documents related to investment advice provided etc. The *Noticee*, vide letter dated March 02, 2020, also submitted that it does not keep any call data recordings made with the clients. The Enquiry Report, in this regard, has observed that the *Noticee* failed to address the issues pertaining to maintaining of records relating to KYC, risk profiling, suitability assessment etc. On account of failure of the *Noticee* to respond to the said allegations, the DA has held the *Noticee* to be in violation of the IA Regulations for not maintaining proper record.

21. The *Noticee* vide its reply dated November 06, 2022 has submitted that it had provided the data pertaining to maintenance of data related to KYC, risk profiling etc. to the inspecting authority. Further the *Noticee* has also stated that it did not keep proof relating to the call record with the clients and therefore could not submit the proof relating to the same.

22. I have analyzed the submission made by the *Noticee* and I observe that the *Noticee*, for the first time during the course of present proceedings, has made the submission that it had provided data, related to maintenance of records, to the inspecting authority. I also note that apart from the bald statement made by the *Noticee*, there is nothing on record to further support/ substantiate the claim of the *Noticee*. In *arguendo*, even if I were to accept the said submission, it is an admitted fact that the *Noticee* did not maintain call data records of the investment advice provided to its clients which is in violation of regulation 19 of the IA Regulations. Accordingly, I deem it fit to reject the contention raised by the *Noticee*.

V. ***Whether the employees of the Noticee have been providing investment advice to the clients without having the requisite qualification in terms of the IA Regulations;***

23. In respect of the aforesaid issue, I observe that the employees of the *Noticee* were providing investment advice without having appropriate qualification as prescribed under the IA Regulations. In this regard, the Enquiry Report has chalked out a conversation between one of the clients of the *Noticee*, namely, Mr. RJ[1] and one of the employees of the *Noticee*, namely, Mr. Dipak Parmar. On the basis of the said conversation between the client and the employee, the DA has held that the employees of the *Noticee* were indeed involved providing investment advice to the clients.

24. The *Noticee* in its response has stated that the investment advice was given by the research team only and in case the clients needed any support/ clarification with respect to a particular scrip/ tip, the same was provided by the concerned persons.

25. I have examined the contention made by the *Noticee* in this regard. I observe that it is *Noticee's* submission that the employees were acting as a support arm and providing clarifications only and were not actually providing investment advice. I have also perused the call recording between the client and the employee relied upon by the DA. The same is produced hereunder for ease of reference:

> *"**Audio recording of November 30, 2018 at 10:38:03 Mobile No. + 91 73147 *****
>
> *RJ (complainant/client): "Hello"*
>
> *Shri Dipak Parmar (Capitalstar employee): "Sir, NIG book Karo"*
>
> *RJ (complainant/client): "OK"*
>
> *Shri Dipak Parmar (Capitalstar employee): "607 ke something aa raha hai thik hai. 8 Rupee aa raha Hai. Jaldi se exit karo"*
>
> *RJ (complainant/client): "OK…. OK""*

26. On a plain appraisal of the above quoted conversation, it becomes clear to me that the role of the employees of the *Noticee* was not limited to providing clarifications rather the employees of the *Noticee* giving specific investment advice to the clients asking them to make specific investments. Accordingly, I find that the contention of the *Noticee* is not sustainable in law.

[1] The name of the client of the *Noticee* has been abbreviated and only its initials have been used in the interest of customer privacy.

27. Having dealt with the submissions made by the *Noticee* vide its reply dated November 06, 2022 in the preceding paragraphs, I, now, turn my attention towards other allegations levelled against the *Noticee*. I note that the *Noticee* has not submitted any reply with respect to the allegations levelled against it at para 9(I)(a), (b), (c), (f), (i), (j), (l) and (m) above. In the absence of any specific rebuttal/ reason by the *Noticee* to counter the observations made in the Enquiry Report, or in the absence of any material to prove to the contrary, the allegations mentioned in the Enquiry Report are treated as having been admitted by the *Noticee*. In this regard, it is pertinent to refer to the observations of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs. SEBI* (Appeal No. 68/2013, decided on February 11, 2014) wherein the Hon'ble SAT has observed as follows:

> *"…As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor 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…"*

28. At this juncture, I deem it important and significant to look at certain other factors which, in my opinion, must also be taken into account while adjudging the charges against the *Noticee* in the instant matter. During the personal hearing granted on January 12, 2023, the *Noticee* had submitted that the *Noticee* has not engaged in advisory business for the past one year i.e.; since January, 2022, in lieu of the proceedings initiated by SEBI. In this regard, I note that vide order no. QJA/PR/WRO/WRO/22160/2022-23 dated December 16, 2022 (hereinafter referred to as '**the said order'**), the *Noticee* has been debarred from the market for a period of 3 (three) months. In the said order, it was observed that the said contention of the *Noticee* i.e.; the *Noticee* had not engaged in advisory business since January, 2022 was considered in view of the bank statements submitted by the *Noticee* in support of its claim. The *Noticee* had also placed reliance of the said order in the instant proceedings in respect of the said submission. In this regard, it is pertinent to note that the debarment in the said order was issued under Sections 11(1), 11(4), 11(4A) and 11B of the SEBI Act for the same set of violations whereas, the present proceedings are under Section 12(3) of the SEBI Act read with regulation 27 of the Intermediaries Regulations. While the nature of proceedings is indeed different, it is apparent that the violations alleged in both the proceedings are similar. In the present set of facts, I am of the view that the fact that *Noticee* has not indulged in advisory business for quite some time coupled with the fact that *Noticee* is already undergoing debarment from the market up till March 15, 2023, must be taken into account. I note that the DA has recommended that the *Noticee* be prohibited from taking up any new assignment/ contract or launch a

new scheme for a period of three months. I am of the considered view that the said recommendation must be analyzed/ looked into while looking at/ appreciating the fact that the *Noticee* has out of its own volition, not engaged in advisory business for one year i.e.; since January, 2022. As mentioned above, on a perusal of the aforesaid order dated December 16, 2022, I observe that the *Noticee's* submission of not engaging in advisory related business has been duly accepted in the said order in view of the supporting documents submitted by the *Noticee*. That being said, I am of the view that in the peculiar set of facts of the present matter, ends of justice would be rightly met if all the factors such as, period of debarment already undergone/remaining to be undergone, abstinence on the part of the *Noticee* in terms of not doing any business since January, 2022, are taken into consideration while determining the action to be taken against the *Noticee* in the instant proceedings.

29. As noted above, the DA has recommended that the *Noticee* be prohibited from taking up any new assignment or contract or launch a new scheme for a period of three months. The *Noticee* is not carrying out any business since January, 2022, which is already more than the period of prohibition recommended by the DA. I also note that, in any case, the *Noticee* is currently undergoing debarment in view of the said order dated December 16, 2022 and the same is effective till March 15, 2023. Accordingly, I am of the view that ends of justice would be met if no additional period of prohibition beyond the said debarment period is imposed on the *Noticee* in the present set of facts.

ORDER

30. In view of the foregoing discussions and deliberations, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 27(5) of the SEBI (Intermediaries) Regulations, 2008, and upon considering the gravity of the violations committed by the *Noticee* viz. Capital Stars Financial Research Private Limited, as a registered Investment Adviser, I hereby issue the following direction:

    i The Noticee i.e., Capital Stars Financial Research Private Limited (certificate of registration number INA000001647) is hereby prohibited from taking up any new assignment or contract or launch a new scheme till March 15, 2023, from the date of this order.

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

32. A copy of this order shall be served upon the Noticee, all recognized Stock Exchanges, Registrar and Transfer Agent and Depositories for ensuring compliance with the above order.

Sd/-

DATE: JANUARY 27, 2023 **PRAMOD RAO**
PLACE: MUMBAI **EXECUTIVE DIRECTOR**
SECURITIES AND EXCHANGE BOARD OF INDIA