SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

NAME	PAN	SEBI Registration No.
Wealthit Global (Proprietor, Mohit Manghnani)	**CXGPM4395H**	**INA000005473**

BACKGROUND

1. Wealthit Global (Proprietor Mohit Manghnani) (hereinafter referred to as **"Wealthit"/ "Mohit Manghnani"/ "noticee"**) was registered with SEBI as an Investment Adviser (hereinafter referred to **"IA"**) under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the **"IA Regulations"**), having registration number INA000005473, since August 29, 2016. The said certificate of the noticee was cancelled by Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) vide order dated March 31, 2023.

2. 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 06, 2020 (hereinafter referred to as **"the 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 the **"SEBI Act"**), regulations and circulars/ directions issued thereunder. The said inspection was conducted from January 06, 2020 to January 09, 2020.

3. Based on the findings of the inspection, SEBI issued a Show Cause Notice dated May 19, 2022 (hereinafter referred to as the **"SCN"**) to the noticee to show cause as to why appropriate directions under Sections 11(1), 11B(1), 11(4) of the SEBI Act and penalty under Sections 11B(2) and 11(4A) of the SEBI Act read with Sections 15HA, 15HB and 15EB of the SEBI Act and Rule 5 of the SEBI (Procedure for Holding Inquiry

and Imposing Penalties) Rules, 1995 should not be issued/ levied against/upon the noticee. The noticee was also asked to show cause as to why direction to refund the amount of ₹7,30,11,826, collected from the clients/investors/complainants, on or after April 01, 2018, as fees or consideration or in any other form in respect of the investment advisory activities should not be issued.

4. Since the noticee failed to respond to the SCN issued to it, the proceedings were continued and an *ex parte* order dated January 23, 2023 was passed against the noticee, wherein, *inter alia*, the following directions were issued to the noticee:

    a. to refund an amount of ₹7,30,11,826/- within three months from the date of the order;
    b. debarment for a period of 5 years from the date of the order or till the expiry of 5 years from the date of resolution of complaints and completion of refunds to complainants, whichever is later.

    In addition to the aforesaid directions, the noticee was also levied with a penalty of ₹30,00,000.

5. Aggrieved by the aforesaid *ex parte* order, the noticee approached the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**). Hon'ble SAT, vide its order dated July 25, 2023 (hereinafter referred to as the **"SAT order"**), noted that no opportunity of hearing was provided to the noticee as the noticee was in jail and accordingly, Hon'ble SAT remanded the matter to SEBI for passing a fresh order. Further, Hon'ble SAT also directed that an opportunity of hearing may be fixed in the matter on August 10, 2023.

SHOW-CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. As noted earlier, a SCN dated May 19, 2022 was issued to the noticee based on the findings of the inspection, to which, the noticee had not filed any reply. The allegations levelled against the noticee in the SCN, are summarized hereunder:
    i. The noticee, a registered investment adviser with SEBI failed to comply with SEBI's directions with respect to inspection of the noticee wherein the noticee failed to extend co-operation in the inspection proceedings;

ii. The noticee deceived its clients by not disclosing material information and/or misleading its clients;

iii. The noticee continued to act as an IA even after expiry of his National Institute of Securities Market (hereinafter referred to as **"NISM"**) certification on January 01, 2019;

iv. In view of the FIR filed against the noticee by Indore Police, the noticee is *prima facie* alleged not to be '*fit and proper*' person as per schedule II of SEBI (Intermediaries Regulations), 2008 (hereinafter referred to as **"Intermediaries Regulations"**);

v. The noticee promised assured profit and unrealistic returns to its clients;

vi. The noticee sold multiple and non-suitable services to its clients and charged exorbitant fees;

vii. The noticee failed to follow risk profiling and suitability assessment of its clients (faulty risk profiling);

viii. The noticee failed to communicate risk profiling to its clients;

ix. The noticee sold services / products to the clients and received money from them prior to conducting risk profiling of the clients; and

x. The noticee failed to redress investor grievances.

7. In compliance with the SAT order, hearing in the matter was scheduled on August 10, 2023 and the noticee was intimated about the same, vide email dated August 3, 2023. On the scheduled date of hearing, Mr. Abhishek Mishra (Authorized Representative) appeared and requested for twenty-one days' time to file written submissions in the matter and for scheduling of the hearing thereafter. Accordingly, the noticee was advised to file its written submissions on or before August 31, 2023 and the hearing in the matter was scheduled on September 4, 2023. The noticee, vide its letter dated September 1, 2023, filed written submissions, which are summarized as under:

i. A First Information Report (hereinafter referred to as **"FIR"**), dated August 22, 2019, was filed against the noticee for which the noticee was granted an interim bail. Another FIR dated August 28, 2019 was filed on the basis of the complaint of Mr.

Rakesh Sharma and pursuant to the said FIR, police authorities seized all the documents / noticee's data including the bank account, which affected the noticee's operations and therefore, the noticee stopped its operations.

ii. On November 19, 2019, in terms of regulation 23 of the IA Regulations, SEBI issued an inspection notice directing the noticee to produce documents pertaining to its registration for the period from April 01, 2018 till the date of inspection. Since the police authorities had seized all the noticee's data, the noticee could not provide any data to the Inspecting Authority of SEBI. Further, two more FIRs were filed against the noticee and the noticee was detained by police on July 3, 2021. The noticee was in detention for a period of 21 months and was granted bail by the Hon'ble Supreme Court and was released only on March 13, 2023.

iii. Non- compliance with SEBI directions with respect to inspection and deceiving clients:

a) The noticee had no intention not to cooperate with the Inspecting Authorities of SEBI but since the police authorities had seized the documents of the noticee, he was unable to cooperate during the inspection. Though the noticee is duty-bound to furnish the requisite information in terms of regulations 13, 24 and 25 of the IA Regulations, SEBI should look into the surrounding circumstance, prior to reaching any conclusion and accordingly, the alleged violation of regulations 13(a), 25(1), (2) and (3) read with regulation 24(3) of the IA Regulations is not maintainable;

b) The allegation of non-disclosure of material information is vague and baseless as the noticee, vide letter dated December 2, 2019 and email dated January 3, 2020, had informed SEBI that an FIR had been filed against it, noticee's bank accounts had been seized and the noticee had stopped its operations;

c) It has to be understood that if a person has stopped his operations, he would not be available at the office premises. Further, the noticee had not changed his office premises so as to inform SEBI about the new address; and

d) The website was active as its domain name and hosting had not expired. However, the operations of the noticee were entirely stopped as no new payment had been received from any client/ investor.

iv. The noticee had not renewed the NISM registration after January 2019 which was an unintentional mistake. Further, the noticee stopped its operations since July 2019 and no undue gain was made by the noticee. Moreover, the failure to renew the NISM Certificate should be viewed leniently as the noticee had closed its operations after it came to the noticee's knowledge.

v. Filing of FIR against the noticee by the Indore Police:
   a) The crime branch and the police authorities have no jurisdiction in the matters relating to SEBI registered intermediaries. In this regard, reliance is placed upon the decision of the Hon'ble Madhya Pradesh High Court in the matter of ***Alka Shrivastav Vs. The State of Madhya Pradesh***[1], which has been upheld by the Hon'ble Supreme Court; and
   b) Mere filing of FIR cannot be a ground to hold the noticee as not fit and proper as the noticee has not been found to be guilty in any of the FIRs filed.

vi. Promising assured profit and unrealistic return to its clients:
   a) The noticee has never assured any kind of guaranteed returns to the clients, rather he has informed the clients about the risks involved in the securities market;
   b) As regards the complaint filed by Mr. Kundan Kumar (hereinafter referred to as **"Mr. Kundan"**), the noticee had not promised assured returns, rather he had provided an immunity to Mr. Kundan that he may not pay any further fees till the time he gets profit. The noticee had not provided any timeline to the client during which Mr. Kundan would earn profits;
   c) The transcript mentioned at para 6.2 of the SCN is not of any employee of the noticee. Further, SEBI has only relied upon a part of the recordings and has not taken into account the entire communication made with the client. Moreover, in absence of any forensic verification with respect to the call recording, the said recording, cannot be attributed to the noticee; and
   d) The noticee refers to the order of SEBI in the matter of Star World Research wherein it was held that:

      "The material on record does not indicate that the aforesaid emails addresses belonged to the Noticee. Further, the call recordings are not supported by any further

[1] M.CR.C.NO. 23883/2020

examination. Hence, I am unable to rely on them to arrive at any finding of violation with respect to the making promises of assured or unrealistic return, as alleged".

vii. Selling multiple and non-suitable services and charging exorbitant fees:

a) SEBI has not prescribed any limit for the fees to be charged from the clients and SEBI has come up with the circular only in September, 2020 and thus, SEBI has no jurisdiction regarding the fees charged from the clients;

b) The clients used to take subscription for multiple services and used to renew the service prior to its expiry, as a result of which the total fee was high. The clients always paid the fees with their own consent and were not forced in any manner. Further, the service offered by the noticee was of trading nature wherein the trading amount of the investor keeps on changing on a daily basis and the investor also gets margin/ limit from his broker for trading;

c) The clients were able to pay high fees which validates that the client's annual income and the proposed investment amount were much higher than mentioned. Further, if a client does not disclose correct details/ information, the investment adviser shall not be held liable;

d) Clients increase the investment amount once they start earning profits and no investor/ trader will pay a higher amount of fees than the investment amount/ annual income;

e) The noticee charged fees from the clients in installments after the clients were satisfied with the services of the noticee and the clients have not been charged up front. It would have been unfair if the services were not being provided to the clients. However, the services have been duly provided to the clients;

f) The noticee was not following any unfair, unreasonable or arbitrary process and all the services were duly explained to the clients and only after that the clients had paid the remaining installments with their own consent. No payment was accepted in cash and the all the transactions were initiated by the clients as a service charge; and

g) The products were not sold multiple times rather the clients had paid the payments in installments for a single service and the service tenure was extended after each payment made by the client.

viii. Not following the RPF and suitability assessment of clients (Faulty Risk Profiling):

a) The clients were active traders who were trading regularly in the securities market and prior to providing recommendations in variance with the risk profiling, the noticee had informed the clients of the risk involved;
b) The clients were investing just a portion of the entire investment in line with the noticee's recommendation and thus, the clients with low/ medium risk appetite were ready to trade in derivative and commodity segment;

ix. As regards the allegation that the noticee communicated the risk profiles to the clients after completing the risk assessment, the noticee contended that the systems of the noticee had been seized by the police. Hence, he could not produce any material to show that risk profiles were communicated to the clients. He, therefore, contended that the said allegation may be dropped or SEBI may check the data which is in custody of the police authorities.

x. The risk profiling of Mr. Puthran was done prior to the payment. However, the same was sent to the client again as there were certain changes in the risk profiling. Apart from it, it is contended that, there is no material on record which establishes the allegation regarding selling of services/ products and receiving money prior to risk profiling and thus, the same should be dropped.

xi. Non-redressal of investor grievances:
a) The noticee had always resolved all the clients' grievances in a timely manner and provided the best resolution possible which is evident from the SCORES portal as only 21 complaints are pending as against the total of 123 complaints received. Further, the pending 21 complaints are on account of seizure of documents by the police authorities and prior to the same, the noticee had always promptly responded to any investor grievance; and
b) The noticee had no intention of not resolving the grievances as in the past as well the noticee had resolved all the grievances in a timely manner;

xii. Violations of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred as **"PFUTP Regulations"**):

a) If the noticee intended to defraud the clients, it would not have opted for SEBI registration and followed the requisite/ applicable compliances;

b) For an act to fall within the purview of the term 'fraud', as defined in regulation 2(1)(c), there has to be *dealing in securities*. There is no proof to show that the noticee committed a fraud while 'dealing in securities' as contemplated under the PFUTP Regulations;

c) Reliance is placed on the SEBI order in the matter of Star World Research, wherein, it was held that:

> "*With respect to the definition of "fraud" under regulation 2 (c), I am of the view that the same is very wide and general in nature. The definition of "fraud" alone does not bring an act within the purview of PFUTP Regulations. There has to be "dealing in securities" as defined under regulation 2(1)(c) of PFUTP Regulations. There is no proof to show that the IA has committed fraud while "dealing in security" as contemplated under the PFUTP Regulations. In view of this, the misleading representations made by the IA to its clients and the wrong categorisation of clients and selling high risk products to unsuitable clients or levying GST after cancellation of its GSTN, etc., would not bring the Noticee`s acts within the prohibition under the PFUTP Regulations. These are violations of the prescriptions laid down in various provisions of the IA Regulations and the Code of Conduct. I am, therefore, inclined to drop the allegation of fraudulent and unfair trading in favour of the Noticee.*"

Similar interpretation was adopted by SEBI in the matter of Niveshicon Investment adviser; and

d) There is no evidence with SEBI to substantiate the allegation of fraud. The Hon'ble SAT in the matter of Ms. Suhanika Chourey had set aside the finding pertaining to PFUTP violations on account of lack of evidence.

xiii. Noticee has not committed any grave violations and therefore, should not be liable for any massive monetary penalty. The direction to refund the amount of ₹7,30,11,826/- in the order dated January 23, 2023 is baseless and irrational as the noticee has not carried out any unregistered activities, rather the noticee was duly registered with SEBI.

xiv. The noticee has made refunds to clients who faced losses due to the advice/ recommendation of the noticee and to the clients who were not satisfied with the services of the noticee. If the noticee had fraudulent intentions, it would not have refunded the amount to the clients.

xv. There has been no loss caused to any investor, the noticee has no repetitive nature of default as the noticee had stopped its operations since filing of FIR. Further, the noticee has not generated any income in the past four years.

8. Pursuant to the receipt of the aforesaid submissions, the hearing in the matter was conducted, as scheduled on September 4, 2023 through Webex and Mr. Abhishek Mishra, appeared and reiterated the aforesaid submissions. During the course of hearing, the AR emphasized on the submission that the relevant documents had been seized by police authorities. On being asked to produce a copy of the seizure memo, the AR submitted that the noticee had requested the police authorities to provide the same. However, the said copy has not yet been provided to the Noticee. The AR of the noticee undertook to provide an affidavit as regards the documents seized by police. The AR further submitted that the noticee had voluntarily made refunds to the clients. The AR / noticee was accordingly advised to submit details of such refunds along with the relevant documentary evidence and file the post-hearing submissions in the matter within ten days from the date of hearing. The noticee, vide email dated September 21, 2023, submitted post-hearing submissions in the matter which are summarized as under:

   i. The noticee has refunded the service amount to the clients who were dissatisfied with the services and who has faced losses due to noticee's recommendations and proof of the same has been attached with the post-hearing submissions;
   ii. Although there might be some non-compliance on the part of the noticee but the same was non-intentional and the noticee has not made any unlawful gain and the monetary penalty of ₹30,00,000/- imposed against the noticee should be set aside; and
   iii. SEBI has never directed any registered intermediary to refund the amount collected as fees despite such intermediaries having committed serious violations

CONSIDERATION OF ISSUES AND FINDINGS

9. I have perused the allegations levelled against the noticee in the SCN, the submissions made by the noticee vide letter dated September 1, 2023 and email dated September 21, 2023, oral submissions made during the course of personal hearing and other material available on record. Before proceeding to deal with the matter on its

merits, I note that the noticee is alleged to have violated the provisions of the SEBI Act, the PFUTP Regulations, the IA Regulations and the circulars issued thereunder. Therefore, the relevant provisions, alleged to have been violated by the noticee, are reproduced hereunder for ease of reference:

Relevant provisions of the SEBI Act:

Prohibition of manipulative and deceptive devices

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;

Penalty for fraudulent and unfair trade practices.

***15HA**. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for default in case of investment adviser and research analyst.

***15EB.** Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

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 liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Relevant provisions of the IA Regulations:

Consideration of application and eligibility criteria.

6. For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely, —

(f) whether the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

Qualification and certification requirement.

7. (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) rom 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.

Conditions of certificate.

13. *The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(a) the investment adviser shall abide by the provisions of the Act and these regulations;

(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

General responsibility.
15. *(1) An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.*

(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

(12) Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.

(13) It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times.

Risk profiling.
16. *Investment adviser shall ensure that,-*

(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;

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

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;

21. Redressal of client grievances.
(1) An investment adviser shall redress client grievances promptly.

Notice before inspection.
24. *(3) During the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.*

Obligation of investment adviser on inspection.

25. *(1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including representative of investment adviser, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.*

(2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[*See* sub-regulation (9) of regulation 15]

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.

5. Information to its clients

An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

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. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

8. Compliance

An investment adviser including its representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

<u>Provisions of PFUTP Regulations:</u>

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...

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(o) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;

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

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

(i) knowingly making a false or misleading statement, or

(ii) knowingly concealing or omitting material facts, or

(iii)knowingly concealing the associated risk, or

(iv) not taking reasonable care to ensure suitability of the securities or service to the buyer.

10. Having reproduced the relevant provisions of law above, I now proceed with the matter on merits. I note that the SCN contains multiple allegations of the SEBI Act, PFUTP Regulations and IA Regulations against the noticee. For the sake of clarity, I will deal with the allegations of violation of the IA Regulations under different heads as brought out in the SCN. However, as regards the allegations relating to SEBI Act and PFUTP Regulations, the same shall be addressed under a common head, separately from the alleged violations of the IA Regulations.

I. Non-compliance with SEBI directions during inspection and deceiving clients:

11. The SCN issued to the noticee alleged that the noticee was not found at its registered address and some other business was being carried out in the name of "Baghel Consultancy Services" at the said address since November 8, 2019. The said change in the registered address, which is also available on the SEBI website for investors, was not intimated to SEBI by the noticee. It has been further alleged that the noticee failed to submit pre-inspection data. Further, the noticee failed to produce itself before the Inspecting Authority for statement recording. It has also been alleged that the website of the noticee was constantly being updated during the inspection period and it was still showing the details of the advisory products offered by the noticee. In view of the same, the noticee is alleged to have violated regulations 13(a), 13(b), 15(9), 15(12), 24(3), 25(1) and 25(2) read with Clause 1 and Clause 8 of the Code of Conduct in Schedule III, as specified in the IA Regulations and regulations 3(a), (b), (c), (d) of the PFUTP Regulations read with Sections 12A(a), (b), (c) of the SEBI Act.

12. In this regard, the noticee has submitted that it had no intention to not cooperate with the Inspecting Authorities but since its documents had been seized by the police authorities, it could not produce the same during the course of inspection. The noticee has further submitted that the allegation of non-disclosure of material information is vague and baseless as the noticee, vide letter dated December 2, 2019 and email dated January 3, 2020, had informed SEBI that an FIR had been field against it, noticee's bank accounts had been seized and the noticee had stopped its operations. As regards the allegation of active website, the noticee has submitted that the same was active as the domain name and hosting had not expired but the noticee did not receive any new payment from the clients/ investors.

13. I have perused the submissions made by the noticee, vis-à-vis, the allegations levelled in the SCN. As regards the submission that the data was seized by the police authorities, the noticee has failed to produce any evidence whatsoever in support of its contention. The noticee has not produced the seizure memo issued by the police authorities for confiscating the documents of the noticee. Pursuant to the hearing, the noticee has submitted an affidavit, wherein, it stated that it is unable to produce any document as the police authorities have not filed any chargesheet in the matter. Here, I deem it appropriate to delve into the provisions and procedure related to the process of search and seizure under the Code of Criminal Procedure (hereinafter referred to as **"CrPC"**). Chapter VII of the CrPC deals with 'Processes To Compel The Production Of Things' and Section 100 (5) and (6) require the officer seizing the documents to provide a list of the documents to the occupant of the place searched. The aforesaid provisions are reproduced hereunder for ready reference:

> *"(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.*
>
> *(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person."*

From the above, it is noted that the occupant of the place searched is legally entitled to obtain a list of documents which have been seized by the authorities.

14. The noticee, in the affidavit, has sworn that since the chargesheet has not been filed in the court, it is unable to produce before SEBI, copy of the chargesheet and other documents. Although the noticee has sworn that it is not in possession of copy of chargesheet and other documents, the noticee has not submitted anything as regards the seizure memo. *In arguendo*, even if the submission of the noticee is accepted that it is not in possession of the documents and the seizure memo is also not available with the noticee, the noticee has not placed any evidence/ argument on record to show that

it has taken requisite steps to obtain the certified copies of the seized documents or even the seizure memo from the authorities. In terms of sections 451 and 457 of the CrPC, the magistrate is empowered to direct the delivery of property to the person entitled but as noted above, the noticee has not brought on record any evidence to suggest that any effort has been made by the noticee to procure the documents seized by the authorities to defend itself before SEBI. Accordingly, in absence of any evidence to show that the noticee has taken appropriate steps to obtain a copy of the seized documents/ seizure memo from the authorities, I am not inclined to accept the submissions of the noticee.

15. The noticee has also submitted that it had informed SEBI about filing of FIR and its documents and bank accounts being seized and frozen, vide its letter dated December 2, 2019 and email dated January 3, 2020. In this regard, it is noted from the perusal of the records that the said information was provided by the noticee pursuant to the issuance of inspection notice to it. In terms of regulation 13(b) of the IA Regulations, an intermediary shall '*forthwith*' inform SEBI about any material change in the information submitted at the time of grant of registration. The information about filing of FIR and seizure of documents was provided by the noticee only pursuant to the inspection notice issued by SEBI and thus, the noticee failed to come forward on its own and make the requisite disclosures. Apart from the same, the noticee has not made any disclosure to SEBI about ceasing of its operations and it not using its premises anymore. The data as regards the address of entities registered with SEBI is disclosed on the SEBI website for information of the investors and thus, the noticee was bound to inform about the said change at the earliest, which it has failed to do.

16. The records show that while applying for registration as an Investment Adviser, the noticee through application for grant of registration in Form-A had informed SEBI that the registered address and correspondence address of the noticee to conduct the business of investment advisory services will be *"101 Adinath Enclave Building Number 107, Chikitsak Nagar, Indore (M.P.)"*. In this regard, vide SEBI's letter dated September 21, 2016, it was communicated to the noticee that the certificate of registration has been granted subject to the conditions specified in Regulation 13 of IA Regulations which, *inter alia,* specifies the following:

"b. the Investment Adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted…."

17. It is noted from the records that, vide letter dated April 13, 2018, the noticee communicated to SEBI with respect to its change in address to "399, PU-4, Scheme No.54, Indore, M.P. – 4520101" and the same was taken on record by SEBI. SEBI, vide its letter dated September 06, 2017, had, *inter alia,* communicated to the noticee that –

"b) A declaration about the change in registered address needs to be communicated to the investors within 15 days from the date of change in address…."

However, it is observed that the subsequent change in the address was not communicated to SEBI and to the clients by the noticee. Any information submitted to SEBI while seeking registration as Investment Adviser is considered as material information, which, *inter alia,* includes name, address of the registered office, address for correspondence and principal place of business, telephone number(s), fax number(s), e-mail address of the applicant. Such information depicts the place where investment adviser has its registered address. Accordingly, it was the responsibility of the noticee, being an investment adviser, to inform SEBI of the change in its address or other information, which it failed to do. Similarly, disclosure of discontinuation of advisory services is material information, which should have been informed to SEBI in writing and also the same should have been widely publicized on its website and through other channels communicating the same to its clients. Regulation 15(12) of IA Regulations mandates that an IA shall furnish information and reports to SEBI from time to time. Further, under clauses (1) and (8) of the Code of Conduct as specified in schedule III read with regulation 15(9) of the IA regulations, an IA has to follow honesty and integrity and comply with the regulatory requirements. However, the noticee chose not to inform SEBI about discontinuation of its investment advisory services, and revealed the same only during the inspection. The noticee did not inform SEBI about change in material information which is in total disregard to the conditions of registration as mentioned above, and thereby violated the provisions of Regulation 13 (b), 15(12), 15(9) read with

clauses 1 and 8 of the Code of Conduct for IAs as specified in schedule III of the IA Regulations.

18. I have also perused the submission of the noticee that the website was active as the domain name of the website had not expired but the noticee was not accepting any payment from clients/ investors. In my view, the said submission cannot be entertained in the facts and circumstances of the case. Being a SEBI registered intermediary, the noticee '…*shall make adequate disclosures of relevant material information while dealing with its clients*', in terms of the regulation 15(9) read with the Code of Conduct for IAs. Although the domain name of the website had not expired, the option to display a pop-up/ message on the website that the noticee is not operational anymore was always available to the noticee. As admitted, the noticee had stopped its operations and thus, the noticee being under a fiduciary duty to its clients, should have informed the clients about the same. Accordingly, I do not see any merit in the submission of the noticee.

19. The noticee is further alleged to have not cooperated with the Inspecting Authority by not presenting himself before the Inspecting Authority for statement recording. It is noted from the records that the noticee has not filed any submissions as regards its absence before the Inspecting Authority for statement recording. It is a settled law that failure to submit any defence despite service of notice is equivalent to admission of the charges levelled in the notice. In this regard, it is relevant to advert to the following observations of Hon'ble SAT in the matter of ***Sanjay Kumar Tayal & Others vs SEBI***[2]:

> *"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."*

20. Similarly, Hon'ble SAT in the matter of ***Shri Dave Harihar Kiritbhai vs SEBI***[3] refused to consider the arguments and documents submitted by the appellants therein, in light of the fact that the Appellants had not filed the same before SEBI when the proceedings were ongoing before SEBI. Hon'ble SAT held the following.

[2] (Appeal No. 68 of 2013 decided on February 11, 2014)
[3] (Appeal No. 93, 104 of 2014 decided on December 19, 2014)

"… it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal and on basis of submissions of Appellant and Respondent, in accordance with applicable law.

7. In view of above, the Tribunal cannot consider the submissions of Appellant nor look at the documents produced before this Tribunal, since these were not made available or produced before Ld. A.O., despite being provided ample opportunities and since fresh submissions and documents cannot be accepted in Appeal as these were not made or produced before Ld. A.O., the Tribunal will decide this matter on basis of material and evidence before Ld. A.O."

21. In view of the aforesaid decisions and material available on record, I am of the view that the noticee is in violation of regulation 24(3) of the IA Regulations on account of its failure to present itself before the Inspecting Authority for recording of statements. In terms of regulation 13(a) of the IA Regulations, the certificate of registration is granted to an IA subject to the condition that the IA shall abide by the provisions of the SEBI Act and the IA regulations. As per regulation 25 read with regulation 24(3) of the IA Regulations, it was the duty of the noticee to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and also to furnish such information as sought by the inspecting authority. Further, the IA Regulations empower the inspecting authority to examine on oath and record statement of any employees, directors, partners, principal officer and persons associated with investment advice or person responsible for or connected with the activities of IA or any other associate person having relevant information pertaining to such IA. It is pertinent to note that apart from its objective of protecting the interest of investors, SEBI has also been entrusted with the objective to ensure orderly and robust development of securities market. For achieving the said objective, SEBI, as a regulator, is required to conduct inspection into the affairs of the registered intermediaries from

time to time for ensuring that the intermediaries are in compliance with the provisions of Acts, Rules, Regulations, Circulars, etc., issued from time to time by SEBI.

22. As observed above, the noticee was not available at the address provided by it. The noticee failed to make himself available for recording of statement before the inspecting authority. The noticee has also deceived its clients by not updating the information of cessation of operations and keeping the website active.

23. In view of the discussion above, I conclude that the noticee has contravened the provisions of the IA Regulations and has, therefore, violated the provisions of –

    i. Regulation 13(a), 13(b), 15(12), 25(1), 25(2), 25(3) read with 24(3), Clauses 1 & 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations, of IA Regulations;

II. Failure to renew NISM Registration

24. The noticee is alleged to have continued to act as an IA, even after expiry of his NISM certification on January 01, 2019. Accordingly, the noticee is alleged to have violated regulation 7(2) read with regulations 13(a) and 15(13) of the IA Regulations. In this regard, the noticee has admitted that it failed to renew its NISM registrations after January 2019 but it has stopped its operations since July 2019 and no undue gains have been made by the noticee. It has further submitted that since the noticee had closed its operations later on, the said violation should be viewed leniently.

25. Regulation 7 of the IA Regulations prescribes qualifications and certification requirements that need to be complied by the IA at all times. I note that certification and revalidation of certification is made mandatory with a view to improve the quality of intermediary services in the securities market. One of the certification requirements which has been specified under the said regulation is that an individual investment adviser or principal officer of a non-individual investment adviser, registered under the IA regulations 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 NISM or from 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. The regulation further provides that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.

26. As mentioned above, while granting registration to the noticee, vide letter dated September 21, 2016, it was, *inter alia,* communicated to the noticee that the actions of the noticee shall be governed by the SEBI Act and the IA Regulations, in respect of the activities carried out by the noticee as an IA. Regulation 15(13) of the IA regulations requires the IAs to ensure compliance with the certification and qualification requirement specified under Regulation 7 at all times. From the allegations levelled in the SCN and the reply filed by the noticee, it is not disputed that the noticee has continued to act as an investment adviser even after expiry of its NISM certificate. The noticee's submission that it had stopped its operations after six months of the expiry of the certificate, i.e., in July 2019, in my opinion, cannot be a valid defence as the requirement of the NISM certificate, flows statutorily from the IA Regulations.

27. In view of the above, I conclude that the noticee has contravened the provision of regulation 7(2) read with regulation 13(a) and regulation 15(13) of IA Regulations.

III. Filing of FIR against Mr. Mohit Manghnani by the Indore Police.

28. The SCN has alleged that on account of the FIR registered by the Indore Police against the noticee, the noticee is, *prima facie*, alleged to be not a '*fit and proper person*' in terms of Schedule II of the Intermediaries Regulations and has further violated regulation 6(f) of the IA Regulations.

29. In this regard, I note that regulation 6(f) of the IA Regulations comes into play when an entity seeks to get registered with SEBI. Since in the present matter, the noticee has not applied for grant of certificate of registration, I am of the view that regulation 6(f) is not applicable.

30. As regards the allegation that the noticee is, *prima facie*, not a '*fit and proper person*', I note that Enquiry Proceedings, in terms of Section 12 of the SEBI Act, were initiated

against the noticee and vide order dated March 31, 2023, the charge of noticee being not a '*fit and proper person*' was dropped as the said FIR was not filed by SEBI, as required under the extant Intermediaries Regulations. The requirement of an intermediary being '*fit and proper person*' is a continuing requirement and under the extant laws, an FIR, if filed by SEBI, can lead to incurring the disqualification under Schedule II of the Intermediaries Regulations. Since, in the present matter, the FIR has not been registered on the basis of any complaint filed by SEBI, I note that the allegation of noticee being not '*fit and proper person*' is not sustainable.

IV.Promising assured profit and unrealistic returns to the clients

31. The SCN has alleged that there were several complaints in SEBI Complaints Redress System (hereinafter referred to as **"SCORES**") alleging that the noticee had assured guaranteed profit/indicated target returns to the complainants. In order to better appreciate the said allegation of offering assured profit and unrealistic returns, it is pertinent to summarize the contents of various complaints as extracted in the SCN:

a) **SCORES complaint no. SEBIE/MP19/ 0001874/1 filed by Mr. Kundan Kumar:**

Mr. Kundan has provided a copy of the email sent by the noticee dated June 15, 2019 to him, wherein, the noticee promised assured returns to the complainant. The relevant extract of email dated June 15, 2019 is as under:

> *"As per our discussions we would like to inform you that our total service charges are INR 7,00,000/- in which we had decided that you have to pay INR 2,50,000/- as initial payments in which we have successfully received INR 1,00,000/- now remaining INR 1,50,000/- you have to proceed as soon as possible within today's timeline.*
>
> *Further we had come to conclusion that after paying INR 1,50,000/- you don't have to pay any further charges till time* ***you are getting the profits of INR 8,00,000/-."***

b) **SCORES complaint No. SEBIE/MP19/0002400/1 dated September 12, 2019 filed by Mr. Krishnadevan T.:**

Mr. Krishnadevan T. had alleged that the noticee told him to pay ₹1,20,000/- and

that the noticee would make him earn ₹4,50,000. However, after Mr. Krishnadevan T. paid the money, the noticee did not accept his calls. In this connection, Mr. Krishnadevan T. has provided call recordings between him and the representative of the noticee. Mr. Krishnadevan has also provided a copy of email dated October 01, 2019, wherein, the noticee has stated that Mr. Krishnadevan has paid total amount of ₹1,20,000/- and that his services of Stock Option HNI would be activated. The transcript of the tele-conversation between the representatives of the noticee with Mr. Krishnadevan T. (in Hindi and English noted in Latin script) is reproduced below:

Audio Clip 1	**Transcript of telecon between Rajeev and Priyanka, representatives of the noticee and Mr. Krishnadevan T (Ph no. 0731-2443829 and 7999619315)**
Telecon held on May 14, 2019	**<u>Assured Return</u>** *Adviser: "Aap mujhe aaj ₹20000 karva dijiye kyoki aapka profile already mere paas aa gayi hai. Aaj mai aapko call karunga aur aaj hi aapko ye paisa **as a profit vapas mil jayega** Uske baad jo bhi trade se profit aayega vo hum dono 50-50 share karenge."* *Investor: "ok sir"* *Adviser: "Toh ye mai done samjhu na phir."* *Investor: "haan done samjho sir."*
Telecon held on May 24, 2019	**<u>Assured Profit on PUT option</u>** *Adviser: Suniye na ek position hai…aapse baat karte samay NIFTY 750 points upar chadh gaya yani aap dekhiye thoda sa delay mai bhi kitna impact hota hai market main.* *(00:32- 1:41): -* *Adviser: Suniye aap ek kaam kijiye 11700 ka PUT Option ka bid lagaiye aap.* *Investor: 11700 ka?* *Adviser: Haan 11700 ka NIFTY ka. Dekhiye agar ye execute hota hai toh **isme mai ₹30000 ka return main leke chal raha hoon**. Thik hai…Bade return ke liye mujhe yahi dikh raha hai.* *Investor: Thik hai sir. Kitne pe bid lagane ka hai sir.* *Adviser: Aap uska bid ₹30 ka lagaiye* *Investor: 11700 ka hai na sir?* *Adviser: Haan 11700 ka Put Option ₹30 ka bid lagaiye aur suniye aap bataiye kab pay karenge remaining vala kyoki aajke baad aapse paise mangna nahi chahta."*

	Aaj ke baad mera agar phone jayega toh sirf profit batane ke liye jayega ki kitna profit hua hai. Toh aajke baad mai paise nahi mangunga toh aap mujhe time bataiye ki shaam ko kab tak pura ho jayega." *Investor: "Sir Market hours ke baad payout hota hai aisa bol rahe the vo aisa mai baat kiya tha unse."* *Adviser: 5:30 -6 baje ka time daal du?* *Investor: ok sir 5:30 se 6 baje tak ka daal do"*
Telecon held on May 27, 2019	**<u>Adviser warning investor that his profile will lapse in case he fails to pay additional amount towards service charges immediately</u>** *Adviser: "Sir toh aap meri baat suniye aap ko karna hain ya nahi karna hain kyoki 29th tarikh last date hai uske baad aapki service lapse ho jaegi phir mai kuch nahi kar paungi"* *(00:55 to 1:02): -* *Adviser: - "Aapne haan bhara than na ki aapke paas ₹80000 ka amount hai maine kya bola tha ki aap mujhe ₹20000 aur arrange karva de do mai **aapko profit karwa ke deti**"* *(1:30 to 1:35)* *Adviser: Mere paas 3 profile aur aayi thi vo profile ₹20000 ke investment se 1.5 lakh ke profit mai chal rahi hai.* *(09:37-10:25)* *Investor: mujhe ye bataya hai ki mai agar 22000 aur nahi bharunga toh meri service band ho jayegi* *Adviser: Toh aap hi bataiye ki mai kya karu* *Investor: Toh aapne mujhe pehle kyo nahi bataya….jab maine ₹ 1lakh bhar diye…ab ap k din pehle (i.e. on 27th) bol rahe ho ki 29th taarikh last date hai. Itna paisa mai ek din mai kaha se le kar aaunga.* *Adviser: Mai aapse argument nahi karna chahti hoon ki aap kar paoge payment ya nahi jo maine payment ke baare mai batana tha vo bata diya.* *Investor: Toh yeh aapko pehle batana chahiye na.* *Adviser: Service de rahi mai aapko koi ehsaan nahi kar rahe ho aap. Thik hai mat karo payment service band hai aaj se aapki."*
Telecon held on May 27, 2019	*Adviser - **₹130000 ki service main mai aapko ₹450000 ka return hai within 3 months. ₹450000 ka return guarantee hai.*** *(Time- 5:28 to 5:37):* *Investor: mujhe aap clearly bata dijiye abhi…baad mai mere payment karne ke baad aap aise nahi vese nahi mat kariyega"* *Adviser: **Mai aapko kya bol rahi hu ki aapka ₹4.5 lakhs ka return hai isse jyada aapko kya chahiye**. "*

32. From the above reproduced conversations, it is clear that the noticee's representatives promised unrealistic and assured returns to the client. It is a fact that the returns on investments in securities markets are subject to market risk and such returns cannot be

assured. However, the noticee assured unrealistic returns to the clients seeking advisory fees while making such promises. The above tele-conversation also shows that the noticee used to ask its clients to pay fees by threatening that the service already being provided to the client would lapse and the client would lose out on the opportunity to make profits and also the payment already made. Thus, the noticee was luring its clients to pay additional fees by making false promises about profits that would accrue to the clients.

33. It is observed that the noticee has acted in complete disregard to its fiduciary responsibility towards its clients which it was entrusted with under the IA Regulations and its representatives had actually misguided/unduly influenced Mr. Krishnadevan T to buy the investment products. From the available records, it is observed that after conversation on May 14, 2019 with the representatives of the noticee, on the same day Mr. Krishnadevan paid an amount of ₹20,000 to the noticee. Similarly, on May 24, 2019, Mr. Krishnadevan paid an amount of ₹36,000 and on May 27, 2019 an amount of ₹18,000 was also paid to the noticee. It is observed that during the period from May 08, 2019 to May 29, 2019, Mr. Krishnadevan paid a total of ₹1,20,000 to the noticee to buy the product Stock Option HNI. The receipt of said amount of ₹1,20,000/- is also acknowledged by the noticee vide email dated October 01, 2019.

34. The noticee, in respect of Mr. Kundan, has submitted that it had not promised assured returns to Mr. Kundan, rather it had provided an immunity to Mr. Kundan that he may not pay any further fees till the time he gets profit and the noticee did not provide any timeline during which the Mr. Kundan would have earned profits through his advice. I am of the view that such a submission cannot be accepted. Even though the noticee has not provided any timeline as to when Mr. Kundan would have earned such profits but by informing the client/ complainant that no further charges need to be paid until profits to the tune of ₹8,00,000 are made by Mr. Kundan, the noticee has indirectly assured that the charges due for investment advice may be paid to the noticee after Mr. Kundan has earned a profit of ₹8,00,000. I am of the view that the same is not in the spirit of the IA Regulations. The said statement of the noticee has an element of certainty that Mr. Kundan would certainly make profits and that too, to the tune of ₹8,00,000 and the remaining charges may be paid thereafter. Accordingly, I am not inclined to accept the submissions of the noticee in this regard. Without prejudice to the above findings in

respect of the noticee's submissions, I find that the whole commitment made by the noticee to Mr. Kundan is a sham. As seen from the noticee's email, the total amount payable by the client was ₹7,00,000 out of which the noticee took an advance of ₹2,50,000 and made the commitment that the remainder ₹4,50,000 be paid only when the profit of ₹8,00,000 is achieved. In this whole description, the amount to be invested by the client, duration of such investment, etc. are not mentioned at all. The sole focus of the noticee was to extract upfront ₹2,50,000 from the client by falsely assuring him that he will make a profit of ₹8,00,000 without giving any regard to how such a profit could be achieved. Thus, by providing misleading transaction details to the client and by committing profit to the client, the noticee had deceived the client.

35. As regards Mr. Krishnadevan, the noticee has submitted that the call recordings do not belong to the employee of the noticee and the noticee is being falsely trapped. It has further submitted that in absence of forensic verification, the call recordings cannot be attributed to the noticee. In this regard, I note that during the call on May 14, 2019, the representative of the noticee advised Mr. Krishnadevan to transfer ₹20,000 more and further assured Mr. Krishnadevan that the said amount will be returned to him on the same day as profit. As noted above, after the conversation on May 14, 2019 with the representative of the noticee, Mr. Krishnadevan transferred an amount of ₹20,000 to the noticee on the same day. The noticee has not provided any explanation/ evidence as to why the said amount was paid by the client to the noticee. The amount was received by the noticee matches with the amount mentioned in the conversation recorded above and thus, I am of the view that the same reasonably establishes the fact that it was indeed a representative of the noticee who was communicating with the client of the noticee. The noticee has not disputed the fact that the complainant was his client and that he had made payments to the noticee towards subscription of his services. It is an undisputed fact that the said client had made the payments to the noticee's bank account and not to any other bank account. The fact that the noticee was the beneficiary of all the payments received from the complainant (being influenced by the assurances made by the noticee's employees) is indicative of a well-designed strategy of the noticee to lure clients by making false assurances, which is clearly evident from the fact that all the clients who fell prey to such assurances made payments to the notice only and not to anyone else. Accordingly, the submission of the noticee as regards the call recording

not belonging to the employee of the noticee and there being no forensic verification of the call recordings is not tenable.

36. The noticee has also relied upon SEBI order in the matter of ***Star World Research*** and submitted that:

> *"The material on record does not indicate that the aforesaid emails addresses belonged to the Noticee. Further, the call recordings are not supported by any further examination. Hence, I am unable to rely on them to arrive at any finding of violation with respect to the making promises of assured or unrealistic return, as alleged".*

I am of the view that the aforesaid order is not relevant in the present proceedings and is distinguishable on facts. Unlike the order relied upon by the noticee, there is sufficient evidence on record in the present matter to establish that the Noticee was making promises of assured returns to its clients. As noted above at Paras 33 and 35, the amount received by the noticee in its bank account matches with the amount mentioned by employee of the noticee to the client during the telephonic conversation. The noticee has not provided any justification/ explanation as regards the receipt of such amount and thus, the said facts satisfactorily establish that the noticee was involved in providing assured returns to its clients. Therefore, the reliance on the aforesaid SEBI order by the noticee cannot be entertained.

37. As stated in the SCN, the noticee provided tips/ tele-messages pertaining to products of different segments of securities market *viz.* equity cash segment, equity futures segment, stock derivatives, index derivatives, commodity derivatives, currency, etc., which are traded on the exchange platform. Performance/ return on investment in such securities based on advice given by the noticee cannot be predicted and is subject to market risk. However, the noticee promised assured and unrealistic returns to the clients.

38. In view of the above, on the basis of the above findings and the material available on record including complaints and call recordings, I conclude that the noticee was promising assured returns to its clients. Any promise of assured returns and profits is inherently misleading as it runs contrary to one of the fundamental principles of the

securities market i.e., investments are subject to market risks. Such misleading promises induce the clients to invest in the schemes / packages / products / services offered by the noticee, thereby exposing the clients to risk.

39. It has also been alleged in the SCN that the noticee has violated Regulation 15 (1) of the IA Regulations by promising assured returns, which directs an investment adviser to act in a fiduciary capacity with respect to its clients. The promise of assured return misleads the clients and induces them to subscribe to the various packages/services offered by the IA, which eventually leads to pecuniary loss to the clients as has been seen from the many complaints received. This is not in the best interests of the clients, which contravenes clauses 1 and 2 of code of conduct as specified in schedule III of IA regulations. Thus, the noticee has acted in contradiction of the fiduciary duties cast on it as an IA. I hold that the noticee to be in violation of regulations 15(1) and 15(9) read with clauses 1 and 2 of Code of Conduct as specified in Schedule III of the IA Regulations.

V. Selling multiple and non-suitable services and charging exorbitant/unrealistic fees

40. The SCN has further alleged that the noticee sold multiple and non-suitable services/products to its clients and charged exorbitant fees from them. As per the details available on the website of the noticee, the minimum duration for all the products offered by the noticee was one month. Few instances, where the noticee has allegedly sold the services multiple times to its clients and charged exorbitant fees are produced hereunder for ready reference:

- **Mr. Dhyaneshwar Gupta**

Sr. No.	Date of invoice	Invoice no	Product	Amount (₹)
1	November 27, 2018	201811175	Stock Cash	69,600/-
2	December 12, 2018	201812138	Equity Cash	30,000/-
3	December 13, 2018	201812141	Equity Cash	27,200/-
4	December 13, 2018	201812159	Equity Cash	20,000/-
5	December 22, 2018	201812237	Equity Cash	3,47,600/-
6	January 25, 2019	201901288	Equity Future HNI	8,03,600/-
Total				**12,98,000/-**

It is noted from the above table that the noticee sold the 'Equity Cash' services to the aforesaid client a total number of four times and charged fees ranging from ₹27,200 to ₹3,47,600. Further, the said service was sold thrice within a span of two days to the client. Moreover, the proposed investment amount of the aforesaid client was less than ₹1 lakh and the annual income was in the range of ₹1-5 lakh as per the risk profile of the client, which is not commensurate with the fees charged by the noticee. Further, the invoices issued by the noticee did not have any mention of the tenure for which the services were being provided to the client.

- **Mr. Manoj Puthran**

Sr. No.	Date of invoice	Invoice no.	Product	Amount (₹)
1	December 18, 2018	201812215	Ultra HNI	94,000
2	December 27, 2018	201812396	Ultra HNI	94,000
3	January 1, 2019	2019107	Equity Cash	18,000
Total				2,06,000/-

As per the risk profiling of the aforesaid client, the proposed investment amount was less than ₹1 lakh and annual income was in the range of ₹1-5 lakh. As noted from the above table, the noticee has charged a total amount of ₹2,06,000 from the client between December 18, 2018 and January 1, 2019. Further, the 'Ultra HNI' service was sold to the client twice within the said period. Moreover, the invoices issued by the noticee did not have any mention of the tenure for which the services were being provided to the client.

- **Ms. Jayashree R.**

Sr. No.	Date of invoice	Invoice no	Product	Amount (₹)
1	November 15, 2018	INV_OCT_20181119	Cash	1,37,100
2	December 28, 2018	INV_DEC_201812471	Stock Cash	12,500
3	January 8, 2019	INV_JAN_201901122	HNI MCX	12,500
4	January 12, 2019	INV_JAN_201901264	HNI MCX	52,485
5	January 21, 2019	INV_JAN_201901169	Cash HNI	1,05,000

Sr. No.	Date of invoice	Invoice no	Product	Amount (₹)
6	January 30, 2019	INV_JAN_201901165	Equity Future HNI	2,36,000
7	February 5, 2019	INV_FEB_20190292	Equity Cash Premium	29,500
8	February 5, 2019	INV_FEB_201902110	Equity Cash Premium	52,600
9	February 11, 2019	INV_FEB_201902230	Equity Cash Premium	40,000
10	February 11, 2019	INV_FEB_201902247	MCX	12,000
11	February 18, 2019	INV_FEB_201902669	MCX	12,000
12	February 22, 2019	INV_FEB_201902671	MCX	15,000
13	February 28, 2019	INV_FEB_201902673	MCX	25,000
14	March 7, 2019	INV_Mar_20190403	Equity Cash	25,000
15	March 8, 2019	INV_Mar_20190418	Equity Cash	47,200
16	March 11, 2019	INV_Mar_20190453	Equity Option	17,700
17	March 15, 2019	INV_Mar_20190534	Equity Option	20,000
18	March 19, 2019	INV_Mar_20190602	Equity Option	25,000
19	March 22, 2019	INV_Mar_20190647	Equity Option	47,200
20	March 23, 2019	INV_Mar_20190667	Equity Cash	35,000
21	March 26, 2019	INV_Mar_20190708	Base metals +Energy	59,000
22	March 29, 2019	INV_MAR_20190770	Equity Cash HNI	1,20,000
23	April 8, 2019	INV_APR_201904135	Equity Cash	35,400
24	April 10, 2019	INV_APR_201904162	MCX Basic	40,000
25	April 17, 2019	INV_APR_201904276	Equity Option	17,700
26	April 17, 2019	INV_APR_201904277	Equity Cash HNI	15,000
27	April 23, 2019	INV_APR_201904369	Equity Cash HNI	25,000

Sr. No.	Date of invoice	Invoice no	Product	Amount (₹)
28	April 23, 2019	INV_APR_201904370	Equity Cash Premium	51,000
29	April 23, 2019	INV_APR_201904371	Equity Cash	65,500
30	April 23, 2019	INV_APR_201904372	Equity Cash Premium	5,000
31	April 27, 2019	INV_APR_201904440	Equity Cash Premium	1,56,555
32	April 27, 2019	INV_APR_201904441	Equity Cash Premium	51,555
33	April 29, 2019	INV_APR_201904453	Equity Cash Premium	1,61,111
34	April 29, 2019	INV_APR_201904465	Equity Cash Premium	1,00,000
35	April 30, 2019	INV_APR_201904487	Equity Cash Premium	50,000
36	May 3, 2019	INV_2019_MAY_54	Equity Future HNI	25,000
37	May 3, 2019	INV_2019_MAY_56	Equity Future HNI	25,000
38	May 10, 2019	INV_2019_MAY_150	Equity Future	29,500
39	May 21, 2019	INV_2019_MAY_362	Equity Future	10,000
Total				**20,01,106**

It is noted from the above table that from November 15, 2018 to May 21, 2019, the noticee charged a total amount of ₹20,01,106 from the client and sold 13 products 39 times. For instance, the product 'Equity Cash Premium' was sold by the noticee twice on the same day(s), i.e., April 27, 2019 and April 29, 2019 and the said service was also sold on April 23, 2019 and April 30, 2019. As noted from the table above, for 'Equity Cash Premium' service only, within a span of few days, the noticee charged an amount of around ₹5,75,221 lakhs from its client. Vide email dated February 19, 2020, the aforesaid client has informed that her annual income, as per the Income Tax Return filed for Financial Year 2018-19 was ₹19.95 lakh and for the Financial Year 2019-20 was ₹4.01 lakh. Further, the invoices issued by

the noticee did not have any mention of the tenure for which the services were being provided to the clients.

41. In this regard, the noticee has submitted that SEBI has not specified any limit as regards the fees that might be charged by an IA from its clients. As argued, the relevant circular in this regard had come in September 2020 and thus, prior to that, SEBI cannot be said to have any jurisdiction as regards the fees charged by the IAs. It has also been argued that the clients have paid the fees for the services with their own consent and were not forced in any manner. Further, the fact that the clients were paying high fees, validates that the clients had annual income and proposed investment amount higher than what was declared by them and if a client does not disclose correct details, the IA cannot be held liable for the same. The noticee has further submitted that the noticee charged fees from the clients in installments, and the clients were not charged up front. It would have been unfair if the services were not being provided to the clients but the services were duly provided to the clients. The products were not sold multiple times rather the clients had paid the payments in installments for a single service and the service tenure was extended after each payment was made by the client.

42. On perusal of the record, it is observed that the SCN alleged the aforesaid irregularities as regards 9 (nine) clients of the noticee but the noticee has not addressed the specific allegations as regards the 9 (nine) clients. It is also noted from the submissions of the noticee that the it has not disputed the amount of fees charged from the clients.

43. As regards the exorbitant fees, the noticee has argued that SEBI had not specified any limit for the fees which may be charged from the clients and all the fees were paid by the clients out of their own consent and without any coercion. I am of the view that such submission of the noticee is not within the letter and spirit of the law, as envisaged in the IA Regulations. I note that clause 6 of the Code of Conduct specified in the Third Schedule of the IA Regulations prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020 (hereinafter referred to as the **"2020 Amendment"**) read "*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 client is fair and reasonable*." Vide 2020 Amendment, regulation 15A was inserted in the IA Regulations, which provided that an IA shall be entitled to charge fees in the

manner specified by the Board. Accordingly, SEBI vide circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, issued guidelines for IAs which, *inter alia,* provided for the manner of charging of fees. In view thereof, I find that prior to the 2020 Amendment, ceiling on fees was not specifically provided. However, clause 6 of the Code of Conduct laid down in the Third Schedule of the IA Regulations, mandated investment advisers to levy "*fair and reasonable charges*". In view thereof, the contention of the noticee to the effect that there was no restriction on fees prior to the 2020 Amendment cannot be accepted. I find that even prior to the 2020 Amendment, the IAs, especially having been engaged by the client in a fiduciary capacity, were mandated to charge a fees which is fair and reasonable. In view of the above finding, the contention of the noticee that, as there was no regulation with respect to fees, it was free to sell multiple subscriptions to the clients and none of the subscriptions were sold to the clients under duress, etc. cannot be accepted.

44. The noticee has also submitted that the products were not sold multiple times, rather the clients had made payments in installments for a single service and the service tenure was extended after each payment. In this regard, it is noted from the material available on record that the invoices issued by the noticee to its clients had no mention of the tenure for which the services were to be provided to the clients. In my opinion, such omission to specify the tenure of services leads to lack of transparency between the clients and the IA and has no logical explanation. Even if the explanation of the noticee about receiving the payments in installments is taken on its face value, the noticee has not justified multiple instances where the payments were received on the same day itself. As noted above, as per the website of the noticee, the minimum duration for any product offered by the noticee was one month. Since the noticee has sold the same product to same client multiple times and no tenure/ duration has been covered in the invoices, I am not inclined to entertain the submissions made by the noticee. The IA Regulations mandate that an IA shall act in a fiduciary capacity towards its clients and should abide by the Code Conduct which requires him to (i) act honestly, fairly and in the best interests of its clients and in the integrity of the market, (ii) act with due skill, care and diligence in the best interests of its clients and (iii) ensure that its advice is offered after thorough analysis and taking into account available alternatives. In view of the facts available before me, I am of the firm opinion that by charging exorbitant fees and selling same products to the clients within a short span of time, the noticee has failed in its

responsibility to act in fiduciary capacity towards its clients which is entrusted upon it under regulation 15(1) of IA Regulations. Further, the noticee has also failed to abide by clauses 1, 2, 5 and 6 of the Code of Conduct for Investment Advisors as specified in Schedule III of IA Regulations read with regulation 15(9) of IA Regulations.

VI. Not following the risk profiling and Suitability Assessment of clients

45. The SCN has alleged that the noticee by classifying low risk clients to high/ medium risk has deceived the clients into buying products which were not suitable to their risk profile. Accordingly, the noticee has been alleged to have committed 'fraud' in terms of regulation 2(1)(c) of the PFUTP Regulations and has violated regulations 3(a), (b), (c), (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act. The noticee has also been alleged to have violated regulations 16(b), 17(a), 15(1) and 15(9) of the IA Regulations read with clauses 1 and 2 of the of the Code of Conduct as specified in the Third Schedule of the IA Regulations. In this regard, the noticee has submitted that the clients were trading regularly in the securities market and the noticee had informed the clients about the risk involved. Further, clients were investing just a portion of the entire investment in line with the noticee's recommendation and thus, the clients with low/ medium risk appetite were ready to trade in derivative and commodity segment.

46. Before dealing with the submissions of the noticee and analyzing the alleged violations, I deem it appropriate to reproduce the risk classification used by the noticee, which is as under:

Risk Classification	**Score**
Low	13 & below
Medium	14-17
High	18-25

47. As brought out in the SCN, the total risk profiling score for Mr. Manoj Puthran was 10.5 and thus, Mr. Manoj Puthran should have been classified as a low risk client. However, Mr. Manoj Puthran had been classified as a medium risk client. Mr. Puthran has also stated, vide his email dated January 25, 2020, that the representatives of the noticee had simply called him and asked questions but Mr. Puthran was not informed that the

same was for risk profiling. Further, another client, namely, Mr. Dhyaneshwar Gupta had a risk profiling score of 11 but he was also wrongly classified as a high risk client and was provided services accordingly. It is noted from the submissions of the noticee that it has not made any specific submissions as regards the aforesaid clients.

48. In this regard, I note that as per regulation 16 of the IA Regulations, identification of the risk appetite / tolerance of the client is essential before the IA renders any advice to the client. In terms of regulation 16(b), the IA is required to have a process for assessing appetite, which in turn entails, *inter alia*, assessing a client's capacity for absorbing loss and his willingness to accept the risk of loss of capital. An IA shall ensure that recommendation given to a client is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. Thus, risk profiling is a function, not only of the willingness of the clients, but also of his capacity to absorb loss. Regulation 17(a) of IA Regulations, *inter alia*, mandates the IA to ensure that all investments on which investment advice is provided, are appropriate to the risk profile of the client. It is a matter of fact that the noticee has sold high risk products to the clients classified as low risk and has thereby, violated regulations 16(b)(i) and (ii) and regulation 17(a) of the IA Regulations. The noticee failed to conduct appropriate risk profiling and suitability assessment of its clients and failed to assess the clients' capacity to absorb loss. The noticee also failed to ensure that the investments on which investment advice was provided were appropriate to the risk profile of the client and has accordingly failed in its responsibility to act in a fiduciary capacity towards its clients which was entrusted upon it under regulation 15(1) of the IA Regulations.

VII.Non-communication of risk profiling to the clients

49. The SCN has alleged that the noticee failed to communicate the risk profiling to its clients. It is noted from the SCN that two complainants, namely, Mr. T. Krishna Devan and Mr. Kundan have submitted that the noticee neither conducted nor shared any risk profile document/ score with them. In this regard, the noticee has submitted that it had a practice of communicating the risk profiles to the clients but since the documents of the noticee have been seized by police authorities, it could not produce any material to support its submission.

50. In this regard, regulation 16(e) of the IA Regulations provides that risk profile of the client shall be communicated to the client after risk assessment is done. Although the noticee has submitted that it was communicating the risk profile to its clients as a matter of practice, it has failed to adduce any evidence in that regard. As noted in the preceding paragraphs, the noticee has not produced any evidence as regards the steps taken to obtain a copy of the documents seized by the authorities and in absence of any effort to defend itself in the present proceedings, I am not inclined to accept the submission of the noticee that it was duly communicating the risk profiles to the clients.

51. Therefore, I note that the noticee, while dealing with its clients, failed to act honestly, fairly and in the best interest of his clients and in the integrity of the market. I also note that the noticee failed to make adequate disclosures of relevant material information by not communicating risk profile to the clients after the risk assessment was done. Therefore, I hold that the noticee is in violation of regulation 16(e) of the IA Regulations

VIII. <u>Selling of services and receiving money from the clients prior to risk profiling:</u>

52. The noticee is alleged to have provided advisory services to its clients prior to the completion of risk profiling. In this regard, for Mr. Manoj Puthran, the noticee sent the risk profiling document on January 8, 2019 but Mr. Puthran was already sold services from December 18, 2018 to January 1, 2019. Accordingly, the noticee is alleged to have violated regulation 17(a) of the IA Regulations.

53. In this regard, the noticee has submitted that the risk profiling of Mr. Manoj Puthran was done prior to providing advisory services, however, it was resent to him again as there were certain changes in the risk profiling. I have perused the submission of the noticee and note that the noticee has not filed any documentary evidence in support of its submission. The noticee has not provided any details as to when the original risk profiling was done and sent to the noticee, and whether the risk profiling was revised on the request of the client. On the contrary, as per the email of Mr. Manoj Puthran dated January 25, 2020, the client (Mr. Puthran) was asked questions over telephone by the noticee but he was never told that the same is being done for risk profiling and Mr. Puthran never signed any risk profiling form. Accordingly, I am not inclined to accept the submission of the noticee that the risk profile was resent to the client.

54. Regulation 17(a) of the IA Regulations mandates that the investment advice provided to an investor shall be appropriate to the risk profile of the client. By providing services to the clients without doing the requisite risk profiling, the noticee was putting the clients at a risk beyond their risk appetite.

55. In view of the above, I find that the noticee has failed to comply with regulation 17(a) of the IA Regulations.

IX. Non Redressal of Investor Grievance

56. The noticee is alleged to have not addressed the grievances raised by its clients in a timely manner. It is alleged in the SCN that, as on January 6, 2019, a total of 33 complaints were pending against the noticee in the SCORES and out of the said 33 complaints, 13 complaints had been pending for more than 30 days. In this regard, the noticee has submitted that the noticee has always strived to resolve the investor grievances and the same is evident from the SCORES Portal wherein only 21 complaints are pending against the noticee as on May 11, 2023. Further, the said 21 complaints are pending as the records of the noticee have been seized by the police authorities and all the 21 complaints have been received after the filing of FIR against the noticee.

57. In this regard, regulation 21(1) of the IA Regulations requires the investment advisers to redress the investor grievances promptly. Further, SEBI Circular CIR/OIAE/1/2014 dated December 18, 2014 (hereinafter referred to as **"2014 Circular"**) requires the investment advisers to resolve the SCORES complaints within a period of 30 days.

58. It is observed from the records that the noticee failed to file the Action Taken Report in terms of the 2014 Circular within a period of 30 days for 13 complaints which were pending as on January 06, 2019. The details of the said complaints are reproduced hereunder for ready reference:

Complainant Name / Complaint Lodged by	**Complaint Status**	**Date of Receipt of complaint**	**Whether ATR was sought from IA**	**Whether IA filed ATR with SEBI**
Bikram Chandra Roy	Pending	Nov 10, 2019	Yes	No
Kuldeep Sahani	Pending	Sept 06, 2019	Yes	No
Sunil Agrawal	Pending	Sept 03, 2019	Yes	No

Vinodkumar Dashrathlal Patel	Pending	Sept 01, 2019	Yes	No
Kundan Kumar	Pending	Aug 01, 2019	Yes	No
Ram Saran Yadav	Pending	June 24, 2019	Yes	No
Ashok kumar manjhi	Pending	July 06, 2019	Yes	No
R.N Mathur	Pending	July 01, 2019	Yes	No
Uma Shankar	Pending	June 18, 2019	Yes	No
Nikhil Dhakate	Pending	June 11, 2019	Yes	No
Satish Kumar	Pending	May 10, 2019	Yes	No
Dhyaneshwar Gupta	Pending	Feb 15, 2019	Yes	No
Waheed Khan	Pending	Sept 16, 2018	Yes	No

It is noted from the table above that a total of 13 complaints were pending against the noticee for more than 30 days, as on January 6, 2019 which is in violation of the 2014 Circular.

59. The noticee has submitted that as on date only 21 complaints are pending against it and the same have been received after the documents of the noticee were seized by police authorities pursuant to the FIR filed against the noticee. The noticee has not provided the details of the aforesaid 21 complaints, i.e., when the said complaints were filed. The noticee has also not made any submission as regards the 13 complaints which were alleged to be pending against it in the SCN. The FIR against the noticee was filed on August 28, 2019, pursuant to which the authorities have seized the documents of noticee, as submitted by the noticee. Even if the noticee's submissions are taken at face value, only 4 complaints have been received against the noticee after the filing of FIR. Accordingly, at the very least, the noticee ought to have acted upon the remaining 9 complaints which it has failed to do. Further, on perusal of the records available with SEBI, as on October 5, 2023, 53 complaints are pending against the noticee since September 16, 2018. Further, the said 13 complaints which were pending against the noticee on January 6, 2019 are also pending as on date and the noticee has not taken any steps whatsoever to resolve the same. Therefore, I am of the view that the noticee has violated the 2014 Circular and regulation 21(1) of the IA Regulations.

X. Violations of PFUTP Regulations

60. Now, I deal with the allegations levelled against the noticee as regards the violation of the PFUTP Regulations. As noted in the preceding paragraphs, the noticee has committed the following acts in violation of the IA Regulations:
    a) The noticee has not cooperated during the SEBI inspection and has deceived its clients by not disclosing the information as regards change in the address and stopping of business;
    b) The noticee has failed to renew its NISM certification;
    c) The noticee made promises of assured and unrealistic returns to the clients;
    d) The noticee has sold non-suitable services and charged exorbitant fees from its clients;
    e) The noticee has sold services which were not suitable to the risk profile of the clients to maximize the amount of revenue and the risk profiling done by the noticee was defective;
    f) The noticee has not communicated the risk profiles to its clients;
    g) The noticee has sold services to the clients prior to risk profiling;
    h) The noticee has not redressed the investor grievances.

61. It is noted that as per regulation 2(m) of the IA Regulations “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. The term “investment advice” has been defined under regulation 2(l) 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. On a perusal of these definitions, it becomes clear that the role of an “investment adviser” envisaged under the IA Regulations is that of a person rendering advice relating to investing, buying, selling or dealing in securities or investment products and advice relating to investment portfolio containing securities/investment products. In my view, looking at the scheme of IA Regulations, the role of an investment adviser is to provide honest and fair advice to its clients considering their financial situation, investment experience, investment goals, etc. The

investment adviser should also make adequate disclosures of the relevant material information to its clients and should charge fair and reasonable fee its clients. I find that the noticee, being a registered IA was under an obligation to provide the investment advice, suitable to every client. However, as discussed the noticee sold products meant for high risk bearing clients to clients who did not have such risk appetite as the same would yield more fee to the noticee. The noticee made promises of assured returns to its clients and sold the same services to its clients on multiple occasions only to maximize its own profits. Further, charging of unreasonable fee from the clients which in many cases exceeded the annual income of the client recorded in his risk profiling would also tantamount to deceptive behaviour on part of the noticee.

62. An IA cannot make a statement without having reasonable grounds for believing it to be true as mandated in the PFUTP Regulations. An investment adviser cannot sell products guaranteeing assured returns to investors as was being done by the noticee in the present case. Knowing fully well that all investment in stocks, derivatives, etc. in respect of which the noticee was offering investment advice are subject to market risk, the noticee was falsely promising unrealistic assured returns on investments. The modus operandi adopted by the noticee discussed hereinabove shows that the noticee was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve advising the client considering his/her financial situation, risk appetite, financial goal, prior experience, etc. From the findings discussed hereinabove it is clear that the noticee was running a pre-meditated device, plan/ scheme whereby, the employees /tele-callers/ representatives of noticee would lure gullible investors by misrepresenting, making unrealistic profit commitment, etc. and then more and more money would be extracted from them by selling them various products which did not even match their risk profile in many instances, and also while services under existing packages were still running.

63. The above discussed non-genuine and deceptive activities, misrepresentation is fraudulent and is covered within the definition of “fraud” defined under regulation 2(1)(c) of PFUTP Regulations, which provides as follows:

> *“(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...

64. Therefore, I find that the activities/dealings on part of the noticee, of the nature discussed in preceding paragraphs, and summarized and analyzed above, are fraudulent and in violation of the provisions of section 12A(a), (b) and (c) of the SEBI Act and regulations 3 (a), (b), (c) of the PFUTP Regulations.

65. Further, as noted above, the noticee sold same services, multiple times, to its clients only in order to charge exorbitant fees and enhance the fees, thereby violating regulation 4(2)(o) of the PFUTP Regulations. The noticee has also failed to provide the investment advice as per the risk appetite of the clients and has accordingly, not taken reasonable care to ensure the suitability of the services to the clients which is also in violation of regulation 4(2)(s) of the PFUTP Regulations.

66. At this juncture, I deem it fit to deal with the submission of the noticee that the definition of 'fraud' alone does not bring an act within the purview of the PFUTP Regulations and there has to be '*dealing in securities*'. Since there is no proof of noticee committing fraud while '*dealing in securities*', section 12A of the SEBI Act read with regulations 3(a), (b), (c), (d) of the PFUTP Regulations cannot be made applicable. In this regard, the noticee has placed reliance upon the orders passed by SEBI in the matter of Star World Research and Niveshicon Investment Adviser and the decision of the Hon'ble SAT in the matter of Ms. Suhanika Chourey.

67. I have perused the submission of the noticee and I am of the view that the noticee's submission as regards the definition and applicability of the terms 'dealing in securities' and 'fraud' is misplaced. The Hon'ble Supreme Court in the matter of ***SEBI v Kanaiyalal Baldev Patel***[4] discussed the ambit of the term 'dealing in securities' as it stood then. The Hon'ble Apex Court noted that:

> *"…The definition of 'dealing in securities' is broad and inclusive in nature. Under the old regime the usage of term 'to mean' has been changed to 'includes', which prima facie indicates that the definition is broad. Moreover, the inclusion of term 'otherwise transacting' itself provides an internal evidence for being broadly worded so as to include situations such as the present one…"*

In view of the aforesaid observation of the Hon'ble Apex Court, I am of the view that the actions of the noticee, prior to February 1, 2019, would fall within the ambit of the term 'dealing in securities'. Further, the term 'dealing in securities' was amended with effect from February 1, 2019 and as on date, the relevant except of the definition reads as under:

""dealing in securities" includes:

(i) …

(ii) such acts which may be knowingly designed to influence the decision of investors in securities;

(iii) …"

[4] (2017) 15 SCC 1

As discussed above, the noticee, *inter alia,* has been found guilty of giving advice not suitable to the risk profile of the clients, not doing the risk profiling properly, promising assured returns, etc., which, in my opinion, would definitely amount to '*acts which may be knowingly designed to influence the decision of investors in securities*'. Thus, the submissions of the noticee in this regard, are not acceptable.

68. Before proceeding to issue appropriate directions, I consider it necessary to briefly discuss the very scheme and intent of the IA Regulations. Drawing its genesis and authority from Section 30(1) of the SEBI Act, the IA Regulations were notified to carry out the purposes of the SEBI Act. SEBI Act intends to fulfill three main objectives, i.e., to protect the interests of the investors, promote the development of securities market and to regulate the securities market. In furtherance of the same, the IA Regulations, *inter alia*, intend to serve the aforesaid objectives and any interpretation of the provisions of the IA Regulations has to be in consonance with the same. The violations committed by the noticee by deceiving its clients, charging unreasonable fees etc., cannot be said to be in the best interest of the investors and therefore, appropriate steps ought to be taken for protection of the investors.

69. In view of the violations committed by the noticee as discussed above, I find that directions under Sections 11(1), 11 (4), 11B(1) of the SEBI Act need to be issued against the noticee.

70. The SCN also called upon the noticee to explain as to why monetary penalty under sections 11B(2) and 11(4A) read with sections 15HA and 15HB (for violations prior to March 08, 2019) and section 15EB (for violations subsequent to March 08, 2019) of SEBI Act read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 should not be imposed upon the noticee for the violations alleged hereinabove. In this regard, the relevant extracts of the aforesaid provisions are reproduced below:

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

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 liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Penalty for default in case of investment adviser and research analyst*.*
15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

71. I note that while imposing penalty under the provisions of Section 15EB or Section 15HB of SEBI Act, 1992 the factors enumerated in Section 15J of the SEBI Act,1992 are to be taken into consideration, which provides as follows: -

*"***Factors to be taken into account while adjudging quantum of penalty.**

15J. *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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.

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

72. In this regard, I find that the SCN does not quantify the amount of disproportionate gain or unfair advantage made as a result of the defaults or the amount of loss caused to an

investor or group of investors as a result of the defaults of the noticee. However, although the gain to the noticee has not been quantified on record, the noticee has undisputedly made gains by charging arbitrary fees from its clients.

73. At this juncture, it will be relevant to note here that the noticee had collected ₹7,30,11,826/- as advisory fees, on or after April 01, 2018, i.e., commencement of inspection period. The details of the fees collected is as follows:

Sr. No.	Bank Name	Account Number	Total Credits (₹)
1	YES Bank	047861900000153	3,76,161
2	ICICI Bank	004105501303	2,11,23,437
3	Axis Bank	916020074156780	5,15,12,228
Total			7,30,11,826/-

74. The SCN, *inter alia*, envisages issuance of a direction to the noticee for refund of the amount of ₹7,30,11,826/-, received from the clients/investors/complainant on or after April 1, 2018, as fees or consideration or in any other form in respect to the investment advisory activities. In this regard, I note that directing a registered to refund the fee would be justified in cases where the said IA has collected the fee from clients/investors without being eligible for the same. In the present case, the SCN does not allege that noticee was ineligible to collect fee or was collecting fee without being registered. It is also not alleged in the SCN that noticee had entered into void or voidable agreements with its clients whereunder fee was paid by the clients. It is pertinent to mention here that the charges levelled in the SCN, as discussed earlier, have been based on the activities / conduct of noticee as an IA registered with SEBI, and after being considered from that perspective only, have been found to be in violation of the provisions of the SEBI Act, the PFUTP Regulations and IA Regulations, as has already been noted. However, the SCN does not crystalize as to what part of the total fee of ₹7,30,11,826/- was collected by noticee in violation of the provisions of the IA Regulations / PFUTP Regulations/ SEBI Act. Taking the above into account, in my view, the direction to refund the fee collected

by the registered IA would not be suitable in the present case, and other directions need to be considered.

DIRECTIONS AND MONETARY PENALTY

75. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of sections 11(1), 11(4) and 11B(1) read with section 19 of the SEBI Act, hereby direct that the following:

a) Mr. Mohit Manghnani is directed to resolve all complaints received through SEBI's SCORES portal within a period of three months from the date of this order.

b) Mr. Mohit Manghnani 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 **5 years** from the date of this order or till the expiry of **5 years** from the date of resolution of complaints, whichever is later.

c) Mr. Mohit Manghnani is also restrained from associating himself as a director or key managerial personnel with any listed public company or any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period of **5 years** from the date of this order

76. Further, in exercise of powers conferred upon me under sections 11(4A) and 11B(2) read with sections 15HA, 15HB, 15EB and 15J of the SEBI Act, I hereby impose the following monetary penalty:

NAME	PROVISION OF SEBI ACT UNDER WHICH PENALTY IS BEING IMPOSED	PENALTY (IN ₹)
MR. MOHIT MANGHNANI –	1. SECTION 15HA	20,00,000
	2. SECTION 15HB (FOR VIOLATIONS COMMITTED PRIOR TO 8.03.2019)	8,00,000

PROPRIETOR, WEALTHIT	3. SECTION 15EB (FOR VIOLATIONS AFTER 8.03.2019)	2,00,000
TOTAL		30,00,000

a) The noticee shall remit/ pay the aforesaid monetary penalty within forty-five 45 days from the date of receipt of this Order. The noticee shall remit / pay the said amount of penalty only through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: Enforcement -> Orders -> Orders of ED/CGM (Quasi-Judicial Authorities) -> PAY NOW. In case of any difficulties in online payment of penalties, the noticee may contact the support at portalhelp@sebi.gov.in. The details/ confirmation of e-payment should be sent to "*Division Chief, Securities and Exchange Board of India, 104-105, Satguru Parinay, Opposite, C-21, Mall, A.B. Road, Indore-452010, Madhya Pradesh*" and also to the Email ID: - tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for : (Penalty /Disgorgement /Recovery/Settlement Amount/ Legal Charges along with order details)	

77. This Order is without prejudice to any other action that SEBI may initiate.

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

79. A copy of this order shall be sent to the noticee, recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents to ensure that the directions given above are strictly complied with.

Sd/-

DATE: OCTOBER 20, 2023 **ANAND R. BAIWAR**

PLACE: MUMBAI **EXECUTIVE DIRECTOR**

SECURITIES AND EXCHANGE BOARD OF INDIA