

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

| NOTICEE | SEBI REGISTRATION No. |
|--|------------------------------|
| Investment Visor (Proprietor Praveen Verma) PAN No.AISPV5820B | INA000003411 |

BACKGROUND

1. Investment Visor, having Praveen Verma as its Proprietor, (**‘Noticee’**), bearing SEBI registration number INA000003411, is registered with Securities and Exchange Board of India (hereinafter referred to as **‘SEBI’**) as an investment adviser (**‘IA’**) since August 28, 2015. The Noticee has its registered office at Plot No. 9, Scheme No. 54, PU-4, Vijay Nagar, Indore, Madhya Pradesh -4520103. Its website address is www.investmentvisor.com.
2. SEBI ordered an inspection of the Noticee to verify whether the books of accounts, records and other documents were being maintained by the Noticee in the manner specified by the provisions of the Securities and Exchange Board of India Act, 1992 (**‘SEBI Act’**), Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (**‘IA Regulations’**), circulars made thereunder and whether adequate steps for redressal of grievances of the investors were being taken and the conditions of registration were complied with.

3. On March 16, 2020, inspection team of SEBI reached at the registered address of the Noticee. However, due to non-cooperation by the Noticee the inspection could not be conducted. Subsequent thereto, SEBI initiated proceedings against the Noticee, inter-alia, under provisions of the SEBI Act and issued show cause notice ("**SCN**") dated November 29, 2022 making the following allegations against the Noticee: -
- i. Failure to furnish information and cooperate with inspection team;
 - ii. Failure to redress complaints received on SEBI Complaints Redress System ("**SCORES**");
 - iii. Promised assured profits and unrealistic returns to clients and failed to act in fiduciary capacity towards clients;
 - iv. Employed persons who did not possess qualification and certification prescribed under the IA Regulations;
 - v. Failure to do risk profiling of clients and suitability assessment in terms of the IA Regulations;
 - vi. Sold multiple products/services and charged unreasonable fees to clients;
 - vii. Failure to maintain records in accordance with the IA Regulations;
 - viii. Publishing false claims on its website and phone calls;
 - ix. Collecting GST from clients even after cancellation of GST number

SERVICE OF SCN AND OPPORTUNITY OF HEARING

4. SCN was sent to the Noticee through speed post ("**SPAD**") at its registered address and address i.e. D-4, CRP Line, M.Y. Hospital Campus, Indore, Madhya Pradesh-452001. However, the SCN returned undelivered from both the addresses. SCN was served on the Noticee by way of publication in Times of India(English), Indore Edition and Dainik Bhaskar (Hindi), Indore Edition, both dated December 23, 2022. However, no response was received from the Noticee.
5. In the interest of principles of natural justice, the Noticee was granted hearing on February 09, 2023. In this regard, hearing notice dated January 30, 2023

was sent to the Noticee through Indian Post as well as email. In response thereto, the Noticee vide email dated February 07, 2023 informed that it has not received SCN and requested for copy of SCN and opportunity to file reply thereto. Further, the Noticee requested that hearing dated February 09, 2023 be re-scheduled. Considering the Noticee`s request, hearing dated February 09, 2023 was re-scheduled to March 02, 2023. In the meantime, SCN was delivered to the Noticee through hand- delivery. The Noticee vide email dated February 27, 2023 submitted its reply.

6. On March 02, 2023, Mr. Abhishek Mishra, Company Secretary, appeared for the hearing and submitted on lines of the Noticee`s reply dated February 27, 2023.
7. Before getting into the merits of the matter, it will be appropriate to refer to the relevant provisions of the SEBI Act, the PFUTP Regulations and the SEBI circulars alleged to have been violated by the Noticee:

Provisions of the SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder, —

- (a) *to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or*

incomplete information, return, report, books or other documents, he shall be liable to a 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 failure to redress investors' grievances.

15C. *If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a 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 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 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 104[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Provisions of PFUTP Regulations

"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

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.
- (2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—
.....
 - (k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;
 - (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};"

Provisions of IA Regulations

Qualification and certification requirement.

- 7(1) An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:
 - (a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association; or
 - (b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.
- (2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have, at all times, a

certification on financial planning or fund or asset or portfolio management or investment advisory services:

(a) from NISM; or

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

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

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

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;

.....

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.

.....

(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,-

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

.....

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

(b) it has a process for assessing the risk a client is willing and able to take, including:

.....

(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;
.....
- (d) It has a reasonable basis for believing that a recommendation or transaction entered into:
 - (i) meets the client's investment objectives;
 - (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;
 - (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.
- (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice 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.

Maintenance of records.

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

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

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

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

Redressal of client grievances.

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

(2) An investment adviser shall have adequate procedure for expeditious grievance redressal.

(3) Client grievances pertaining to financial products in which investments have been made based on investment advice, shall fall within the purview of the regulator of such financial product.

(4) Any dispute between the investment adviser and his client may be resolved through arbitration or through Ombudsman authorized or appointed for the purpose by any regulatory authority, as applicable.

Notice before inspection.

24 (1).....

(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.

3.Capabilities

An investment adviser shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities.

4.Information about clients

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

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 partners, principal officer and persons associated with investment advice] 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.

Circular no. CIR/OIAE/2014 dated December 18, 2014

9. *All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.*

10. *The listed companies and SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. ATR in physical form need not be sent to SEBI. The proof of dispatch of the reply of the listed company/SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by the listed company/SEBI registered intermediary, for future reference.*

12. *A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.*

CONSIDERATION

I- Failure to furnish information and cooperate with inspection team

8. In this regard, it was alleged that SEBI vide letter dated February 11, 2020 had informed the Noticee that an inspection of its books of accounts/ records and other documents pertaining to its registration as an IA would be carried out by SEBI and advised the Noticee to send its reply to the pre-inspection questionnaire attached therewith, latest by February 26, 2020. The Noticee

vide email dated February 26, 2020 submitted part reply but failed to submit information related to write-up on details of advisory services provided, write up on procedure/process for risk profiling and suitability assessment, rationale for arriving at investment advice duly signed and dated, Audited Financial Statements for the inspection period, etc.,

9. SEBI vide letter and email dated March 06, 2020 informed the Noticee that inspection of its books of accounts and other records would commence from March 16, 2020 onwards. On March 16, 2020, the inspection team reached the registered office of the Noticee at Plot no. 09, PU-04, Scheme No. 54, Vijay Nagar, Indore 452010, at 11 A.M. However, the proprietor of Investment Visor i.e. Mr. Praveen Verma was not present. One of the member of inspection team contacted Mr. Praveen Verma and informed about the inspection. Thereafter, Mr. Praveen Verma came at about 02:30 P.M. and stated he was not aware about the inspection team`s visit. Upon showing the email dated March 06, 2020, Mr. Praveen Verma stated he might have ignored it due to oversight. Inspection team advised Mr. Praveen to furnish documents sought in the pre-inspection questionnaire by March 17, 2020.
10. On March 17, 2020, the Noticee did not provide any of the documents sought in the pre-inspection questionnaire. The Noticee failed to provide computer systems and documents for inspection. Consequently, inspection could not be conducted.
11. SEBI vide email dated March 17, 2020 informed the Noticee about the facts which transpired on March 16, 2020 and March 17, 2020 and various details and information were again sought from the Noticee. In response thereto, the Noticee vide email dated March 18, 2020 furnished only employee data and stated that various data sought by SEBI were attached in the email. However, no such attachments were found in the said email of the Noticee. Due to absence of sufficient documents and information, multiple emails dated August 13, 2020, August 14, 2020 and August 19, 2020 were sent to the Noticee calling upon it to furnish the information (including the information

sought earlier and not provided by the Noticee). However, no information was provided by the Noticee. In view of the above, it was alleged that the Noticee violated Regulation 13(a), 15(9), 24(3), 25(1) and (2) of the IA Regulations read with clause 8 of Code of Conduct for IA as specified in Third Schedule to the IA Regulations and Section 15A(a) of the SEBI Act.

12. In this regard, the Noticee has submitted that it cooperated with inspection team in the best possible manner. However, at the time of inspection team visit, it was unaware of the same as he had missed the email sent by SEBI. Prior to the said inspection, the Noticee vide email dated February 26, 2020 had provided all requisite information/documents sought in the pre-inspection questionnaire. As the Noticee was unaware about the visit of inspection team, requisite documents could not be produced to the inspecting authority. On 2nd day of inspection, the Noticee had provided the computer systems and documents; however, operating system in the computer was of Linux. The inspection team was not well versed with Linux. The Noticee was in the process of arranging a windows operating system. However, the inspection team left premises. Due to covid-19 pandemic and lockdown imposed by the government, the Noticee's operations were closed and the Noticee had not seen the emails sent by SEBI in August. Hence, the Noticee could not reply to the said emails as it was not having access to the email id.

13. Further, it is submitted that from March, 2020 onwards, sudden nationwide lockdown was imposed across the country due to Covid-19 so office of the Noticee was locked and it could not provide certain documents to SEBI. Hon'ble Supreme Court had also provided relaxations and exemptions from compliances to be followed in that period. Hence, alleged violations should not be looked upon in harsh way and shall provide leniency.

14. I note that regulation 13(a) of the IA Regulations provides that an IA shall abide by the provisions of SEBI Act and regulations framed thereunder. Regulation 15(9) of the IA Regulations provides that an IA shall abide by the Code of Conduct as specified in Third Schedule to the IA Regulations. I note

that regulation 24(3) of the IA Regulations casts an obligation on IA, against whom the inspection is being carried out, to discharge obligations as provided in regulation 25 of the IA Regulations. Regulation 25 (1) of the IA Regulations casts a duty on every IA, in respect of whom an inspection has been ordered under regulation 23, and any other associated person, who is in possession of relevant information pertaining to conduct and affairs of such IA, to provide 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 inspection. Regulation 25(2) of the IA Regulations provides that every such IA and associated person to give to the inspecting authority all such assistance and 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. I note that clause 8 of Code of Conduct as specified in Third Schedule to the IA Regulations provide that IA 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. I note that Section 15A(a) of the SEBI Act provides for penalty for failure to furnish document, information or report to SEBI or furnishing of false, incorrect or incomplete information, return, report, books or other documents, which is required to be furnished under the SEBI Act or any rules or regulations made thereunder.

15. I note that SEBI vide email dated February 11, 2020 sought information from the Noticee regarding details of advisory services provided, know your client procedure, fees payable to IA, risk profiling and suitability assessment of the clients, maintenance of books of accounts, records, procedure to address conflict of interests, copies of agreements with clients, details of investment advice provided, written or oral, rationale for arriving at investment advice, duly signed and dated, details of fees structure in respect of advisory services provided and details of fee collected year wise and product/scheme wise. In response thereto, the Noticee vide email dated February 26, 2020 submitted part reply and failed to submit information related to write-up on details of

advisory services provided, write up on procedure/process for risk profiling and suitability assessment, rationale for arriving at investment advice duly signed and dated, Audited Financial Statements for the inspection period, etc., In view of the above, I reject the contention of the Noticee that it provided all requisite information/documents vide email dated February 26, 2020.

16. I note that SEBI vide email dated March 06, 2020 duly informed to the Noticee that inspection of its books of accounts and other records would commence from March 16, 2020 onwards. The Noticee has also not disputed receipt of the said email. Even after coming to know about presence of inspection team on March 16, 2020, the Noticee failed to provide requisite documents and information to the inspection team on March 16, 2020 or March 17, 2020. Subsequently, when SEBI asked information vide emails dated March 17, 2020, August 13, 2020, August 14, 2020 and August 19, 2020 the Noticee failed to provide requisite information and documents.

17. The Noticee has stated the onslaught of pandemic and lockdown as reasons for its failure to provide information and documents sought vide emails in August 2020. I note that the Noticee was given opportunity to provide requisite documents prior to inspection, during inspection and post inspection also. However, on all occasions, the Noticee failed to provide requisite information and documents. I note that though the pandemic could have delayed submission of information and documents, it in itself cannot be a reason for non-furnishing of information and documents. Thus, I find that the Noticee failed to furnish information and documents sought by the inspection team and SEBI. Further, the Noticee failed to provide computer systems and documents to commence inspection process. I find that the Noticee by failing to extend cooperation to the inspection team and by failing to provide information and documents prior to, at the time of and after inspection has violated regulation 13(a), 15(9), 24(3), 25(1), 25 (2) of the IA Regulations read with clause 8 of Code of Conduct as specified in Third Schedule to the IA Regulations.

18. As noted above, IA was mandated by regulation 24(3), 25 (1) and 25(2) of the IA Regulations to provide 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 inspection. In view of above observation that the Noticee failed to provide documents, information, system and records to the inspection team, I find that the Noticee is liable for penalty under Section 15(A)(a) of the SEBI Act.

Failure to redress complaints received on SEBI Complaints Redress System ("SCORES");

19. In this regard, it is alleged that, as on August 20, 2020, 9 unique complaints were pending against the Noticee on SCORES portal. Out of 9 complaints, 8 complaints were pending for more than 60 days. Details of pending complaints against the Noticee are tabulated as follows: -

Table No.1

| Sl. No | SCORES complaint number | Name of the Complainant | Date of receipt of complaint | Date of forwarding complaint to IA | Date of reminders | Date of reply by IA | Excess time above 30 days |
|--------|-------------------------|-------------------------|------------------------------|------------------------------------|---|---|---------------------------|
| 1 | SEBIE/M P18/00018 95/1 | Pradeep Kumar Agarwal | 16/06/2018 | 21/06/2018 | 13/05/2020 | NA | 766 |
| 2 | SEBIE/M P18/0002 034/1 | A.Sureshch and Lunkar | 03/07/2018 | 10/07/2018 | 20/11/2018; 13/05/2019; 24/12/2019; | 29/12/2018; 10/01/2020 | 747 |
| 3 | SEBIE/B H18/0000 070/1 | Rajesh Kumar | 16/08/2018 | 26/10/2018 | 13/05/2019; 24/12/2019; | 10/01/2020 | 639 |
| 4 | SEBIE/M P18/0004 064/1 | Neelam Sharma /Self | 07/08/2018 | 12/09/2018 | 20/11/2018; 13/05/2019; 16/10/2019; 09/03/2020 | 30/10/2018; 22/11/2018; 19/03/2019; | 683 |
| 5 | SEBIE/MP18 /0004352/1 | Subramanian TN | 08/10/2018 | 09/10/2018 | 20/11/2018; 13/05/2019; | NA | 656 |

| | | | | | | | |
|---|--------------------------|---------------------|------------|------------|----------------------------|------------|-----|
| | | | | | 16/10/2019; 22/04/2020 | | |
| 6 | SEBIE/MP 19/0000934/1 | Rakesh Prasad | 15/04/2019 | 15/04/2019 | 21/06/2019; 24/12/2019; | 30/05/2019 | 468 |
| 7 | SEBIP/MP19 /0000361/1 | Shiv Baran | 30/08/2019 | 02/09/2019 | 24/12/2019; | NA | 328 |
| 8 | SEBIP/MP19 /0000484/1 | Parmanad Koushik | 20/12/2019 | 26/12/2019 | 09/03/2020; | 16/03/2020 | 213 |

20. Further, it has been alleged that the Noticee failed to submit the Action Taken Report (“**ATR**”) in a time bound manner, as prescribed by SEBI, and has also not resolved investors' grievance, thereby, the Noticee violated SEBI Circular CIR/OIAE/2014 dated December 18, 2014 read with regulation 21(1) of the IA Regulations.

21. In this regard, with regard to pending complaints, the Noticee has submitted that it was in regular touch with the clients for redressing their grievance, however, the clients were not responding to the calls/e-mails, hence, there was delay in resolving the complaints. ATR was being filed soon after the resolution provided to the client. Further, it is submitted by the Noticee that it promptly responded to all of its client`s complaint. It contacted the clients on filing of the complaint but in few cases, the final negotiations took several days. Further, it is submitted that the Noticee is also bound to resolve the grievances and hence, the Noticee is under process to resolve the pending complaints of the clients.

22. I note that Regulation 21(1) of the IA Regulation mandate that an IA shall redress client grievances promptly. SEBI has issued circular dated December 18, 2014 governing redressal of investor grievances through SCORES. Clause 9 of the said circular provides that SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon. Clause 10 of the said circular provides that SEBI

registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. The proof of dispatch of the reply of SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by SEBI registered intermediary, for future reference. Further, Clause 11 of the said circular provides that action taken by SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.

23. I note that SCORES provides a platform for aggrieved investors to elicit some response with respect to their grievance from the registered intermediary. From Table No. 1, I note that there was substantial delay on the part of the Noticee in taking steps to resolve the complaints. The Noticee has submitted that it is still in the process to resolve the pending complaints of the clients. I note that the Noticee has not submitted any supporting document to demonstrate steps, if any, taken towards resolution of pending complaints or towards updation of ATR. In view of the above, I find that the Noticee failed to resolve the complaints within the prescribed time. I find that the Noticee failed to update the ATR along with supporting documents. I also find that the Noticee violated SEBI circular dated December 18, 2014 and regulation 21(1) of the IA Regulations.

Promising assured profit/unrealistic returns to its clients and failure to act in fiduciary capacity towards clients

24. In this regard, it is alleged that the Noticee was promising assured profit/unrealistic returns from securities market on the investment made by the clients and luring them to avail its services. The Noticee promised high returns to the clients knowing fully well that investment in equity, equity derivatives, and commodity derivatives are subject to market risk. Further, it is alleged that on April 19, 2018, a call was received by one of the Officers of SEBI's Indore Local Office (“ILO”) from one of the employee (KrishnaKant) of the Noticee. During the call, the employee, inter alia, informed that daily average return being delivered or given by the calls of the Noticee on the invested amount of

the clients is around 20 to 30%. The above statement was confirmed by Mr.Praveen Verma, proprietor of Investment Visor, in his letter dated April 19, 2018. The Noticee is alleged to have violated regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (k) and 4(2)(s) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act and regulation 15 (1), 15(9) of the IA Regulations read with Clause 1 and 2 of Code of Conduct as specified in Third Schedule to the IA Regulations.

25. In this regard, the Noticee has submitted that email id investmentvisor.in@gmail.com, from which the complainant –Mr. Shiv Baran Singh had received email dated April 22, 2019, does not belong to the Noticee. The contact details mentioned in the said email also does not belong to the Noticee. Further, the Noticee has submitted that in its communication with the clients, the Noticee had always used email id which contained its domain name: investmentvisor.com.

26. Further, the Noticee has submitted that it always informed clients through e-mail communications and through the website (www.investmentvisor.com) that they do not provide any guaranteed returns and that investment in share and commodity market is subject to market risk. Adequate disclosures about risks related to investing in securities market have been made under various sections of its website. Upon onboarding of client, the welcome mail that was shared with them, mentioned that they do not provide any kind of guaranteed returns. The Noticee has placed reliance on an order passed by the Whole Time Member (“**WTM**”) of SEBI in the matter of GRS Solutions and other SEBI Orders in the matter of Star World Research and Bonaz Capital. Further, the Noticee has placed reliance on order of the Hon`ble Securities Appellate Tribunal (“**SAT**”) dated January 04, 2022 in the matter of Suhanika Chourey, wherein, findings of violation of PFUTP were set aside as there was no evidence brought on record.

27. With respect to call made by the Noticee`s employee, the Noticee has submitted that the said employee was just illustrating accuracy levels and

returns one might get while investing. The Noticee has submitted that letter dated April 19, 2018 clarified that no such kind of practice was followed by the Noticee.

28. I note that SEBI received a complaint from one Mr. Shiv Baran Singh, under SCORES Regn. no. SEBIP/MP19/0000361/1 dated August 30, 2019, stating that employees of the Noticee had assured that Rs. 5 to 6 lakhs profit would be given within a month. However, after a lapse of four months, the complainant incurred a loss of approximately Rs. 5 - 6 lakh. Mr. Shiv Baran Singh vide email dated August 17, 2020, forwarded an email dated April 22, 2019 received by him from email id investmentvisor.in@gmail.com, wherein, it was mentioned as follows: -

"As you had words with Mr. S.B. Singh about the Slot Services, we would like to offer you the same on your Portfolio. In the Slot Services, we basically take care of all the liabilities of your finance apart from the invested Hard Cash in Dmat Account. In this particular service you will get a good amount of return with a minimum risk of losing money. As per the plan details we would like to highlight about one of our wonderful feature of the Slot Service, which has been mentioned below.

Being as an company we will take care of all your trade, as we deliver more than 85% accuracy on our given calls.

Earlier you have paid 55000/- service for your trading, We are switching out your profile from the current service to the Slot Service. As you had understood the requirements of Slot Service, we will activate the SCALE LEVEL 1 with the below mentioned mentioned details on your portfolio.

*Risk Percentage = 13 % @ 200000/-
Profit Percentage = 45 % @ 200000/-
Average Percentage = 15 % @ 200000/-
Hedging Percentage = 2.5 % @ 200000/-*

The above mentioned key factors has been calculated with the initial investment amount of 500000/- as an hard cash in your portfolio. We would like to tell you that for the activation of Slot Service(Scale Level 1), you need to make the payment of 111000/-.

Overall service amount is 675000/- where you will get 1775000/- return from the market, please check the below payment method.

| <i>Payment</i> | <i>Return</i> |
|----------------|---------------|
|----------------|---------------|

| | |
|----------|----------------------|
| 111000/- | 250000/- to 300000/- |
| 100000/- | 250000/- to 300000/- |
| 100000/- | 250000/- to 300000/- |
| 100000/- | 250000/- to 300000/- |
| 100000/- | 250000/- to 300000/- |
| 100000/- | 250000/- to 300000/- |

29. I note that screenshot dated October 8, 2020 of the website of the Noticee mentioned, inter-alia, as follows: -

“Stock Cash Premium Tips:

*This is our "Flagship Premium Service in the Stock Cash Segment where a high accuracy level is maintained for Intraday as well as Positional calls with a better Risk-Reward Ratio. The calls will be of Stock Cash with a **bigger profit margin** than what is provided in the regular segment specific service. The Calls may be Intraday or Positional in this pack. "Less Calls More Profit" is the motto of this Service."*

Stock cash Tips:

*" Trading stocks is a risky and complex occupation because the direction of the markets is generally unpredictable and lacks transparency. In addition, the financial markets are usually subjected to speculation. But we at IV simplify the process of trading which ultimately results in **profit earning**. In this Stock Cash Tips service we provide our Clients stock tips with more than 85% accuracy which drives them to **profit**. "*

30. I note that vide email dated April 22, 2019 it was represented that profit or unrealistic return can be earned by availing slot service. It mentioned the return range which can be earned by making different payments. I find that email dated April 22, 2019 offered assured profit/return. As per the Noticee, email id from which the said email dated April 22, 2019 was sent did not belong to it. I note that the Noticee has not disputed that Mr. Shiv Baran Singh was a client of the Noticee. I note that email dated April 22, 2019 mentioned that "Earlier you have paid 55000/-service for your trading,". I find that information regarding earlier fees paid and service being availed by Mr. Shiv Baran Singh from the Noticee could not have been available with any stranger. Therefore, the contention that the email had gone from a totally unknown person's email or an unauthorized email id seems unbelievable.

31. I note that a SEBI employee received call from an employee of the Noticee (KrishnaKant) offering assured profit/return. I note that the letter dated April 19, 2018 mentioned, inter-alia, that the employee of the Noticee, inter-alia, informed that *“Daily average return being delivered or given by the calls of investment visor on the invested amount of the clients is around 20%-30%.”* The Noticee has submitted that the said letter dated April 19, 2018 clarified that no such kind of practices is followed by the IA. Upon perusal of the contents of the letter dated April 19, 2018, I find that employee of the Noticee (KrishnaKant) assured profit/return of 20%-30%. In view of the fact that admittedly one of its employees assured particular range of return, I find that assurance or statement of the Noticee that it is not following such practice is not true or correct.
32. From a perusal of the contents of the said email dated April 22, 2019, the website of the Noticee and the Noticee's letter dated April 19, 2018, I find that the Noticee was offering assured profit/unrealistic returns to the clients on the investments. I find that facts of the instant case are distinguishable from the facts of the case of GRS Solutions. In the matter of GRS Solutions, allegations were made on the basis of generic representations made on the website of the Noticee therein and conversation between the client and representative of the Noticee therein. In that context, SEBI-WTM Order in the matter of GRS Solutions observed that “I further note that phrases like “high return on investment”, “high accurate 1-2 calls”, “maximize profit” and “promise of high success rates” without mention of any specific rate of return is mere representation about quality / accuracy of his tips and does not amount to promising assured returns”. However, in the present case, the email dated April 22, 2019 mentioned that the profit percentage of ‘45% @ 200000/-’. Further, it mentioned that *“Overall service amount is 675000/- where you will get 1775000/- return from the market”*. The Noticee's letter dated April 19, 2018 confirmed that its employee informed SEBI employee over phone that they deliver or give average return of around 20%-30% on the invested amount.

33.I find that SEBI orders in the matter of Star World Research and Bonaz Capital and the Hon`ble SAT Order dated January 04, 2022 in the matter of Suhanika Chourey are not applicable to the facts of the present case as the material on record in such cases was found to be not sufficient to arrive at findings with regard to violation of promises of assured or unrealistic return alleged therein. However, in the present case, call from the employee of the Noticee to SEBI officials, confirmation letter dated April 19, 2018 from the Noticee, the said email dated April 22, 2019 and screenshot dated October 8, 2020 of the website of the Noticee evidences that the Noticee was promising assured profit or unrealistic returns on the amount invested by the clients.

34.I note that regulation 15 (1) of the IA Regulation cast duty on an IA to act in a fiduciary capacity towards its clients. Regulation 15(9) of the IA Regulations cast duty on an IA to abide by Code of Conduct specified in Third Schedule of the IA Regulations. Clause 1 of the Code of Conduct provide that an IA shall act honestly, fairly and in the best interest of its clients and in the integrity of the market. Clause 2 of the Code of Conduct require an IA to act with due skill, care and diligence in the best interests of its clients and to ensure that its advice is offered after thorough analysis and taking into account available alternatives. Upon consideration of the above facts in its entirety, I am of the view that the Noticee was promising assured profit/return to the clients on the investments made by the clients, thereby, the Noticee violated regulation 15 (1), 15(9) of the IA Regulations read with Clause 1 and 2 of Code of Conduct as specified in Third Schedule to the IA Regulations.

35.I note that Regulation 3(a) of the PFUTP Regulations prohibits any person from buying, selling or otherwise dealing in securities in a fraudulent manner and Regulation 3(d) of the PFUTP Regulations prohibits a person from engaging in any course of business which operates as fraud or deceit upon any person in connection with any dealing in securities. As noted above, the Noticee assured profit/returns by way of email dated April 22, 2019 (which mentioned that profit percentage of '45% @ 200000/-' can be earned and

return of Rs.1775000/- can be earned by paying service amount of Rs.675000/- where you will get 1775000/-). Further, the employee of the Noticee by way of call to employee of SEBI ILO represented that return of 20 to 30% was being given to the clients on the invested amount. I find that the Noticee was offering disproportionately huge amounts of profits or returns to the clients on the investments. In my view, promising assured profit in securities market amounts to misrepresentation and misleading the investors. Such reckless conduct intended to induce investors to deal in securities constitutes 'fraud' under the PFUTP Regulations. I also note that making promises of "assured returns" has been held to attract the said provisions in terms of Order of the Hon'ble SAT dated December 12, 2022 in the matter of MSS Trading System Centre, which was providing unregistered portfolio management services without obtaining the certificate of registration. Extending the same analogy, I find that the Noticee has violated Regulation 3(a), 3(d), 4(2)(k) and 4(2)(s) of the PFUTP Regulations read with Section 12A(c) of SEBI Act, 1992.

Employees did not possess qualification and certification prescribed under the IA Regulations;

36. In this regard, it is alleged that SEBI vide email dated March 17, 2020 asked the Noticee to provide, inter-alia its employee data, NISM certificates of employees of research team and partners/directors. The Noticee vide email dated March 18, 2020 submitted its list of employees (along with their qualification). However, none of the team members had requisite qualification or certification as required under regulation 7 of the IA Regulations. The Noticee is alleged to have violated regulation 7, 15(13), 15(9) read with clause 1, 2, 3 and 8 of the Code of Conduct as specified in Third Schedule to the IA Regulations.

37. In this regard, the Noticee has submitted that its proprietor was involved in assessing risk profile of the clients, conducting the research and rendering investment advice. Its employees were assisting in collating data from the clients. Employees were not rendering investment advice. Its welcome mail

read *"Investment Visor sales representatives are not Investment Adviser; therefore, they do not recommend investment services to the clients. They are only authorized to sell subscriptions"*. The requirement of qualification of sales staff came in September 2020 through a SEBI circular titled "Guidelines for Investment Advisers", earlier there was no qualification criteria for the employees.

38. I note that the Noticee's emails dated January 17, 2019 and April 11, 2019 to Shiv Baran Singh and Rakesh Prasad, respectively, mentioned *"Our Analysis is solely based on the economic news and deep technical analysis done by our experts."* The complaints made by Neelam Sharma and Rajesh Kumar on SCORES also referred to telephone calls made by the employees of the Noticee.

39. I note that SEBI vide email dated February 11, 2020, inter-alia, sought information about risk profiling and details of investment advice provided by the Noticee. However, the Noticee failed to submit information regarding complete business process, procedure/ process undertaken by the Noticee with regard to risk profiling and suitability assessment.

40. I note that the Noticee on its website –investmentvisor.com provided details about its research team, wherein, it claimed that *".....our team who prepares and delivers free and paid content and trading and **investing advice** have following degrees and educational qualifications. They include MBA finance, Certificate in taxation, International Banking and International finance master degree, ICWA degree holder, intermediate CAs, intermediate CSs, CAs, CSs, CFAs, NCFM (NSE's Certification in financial markets) capital markets, NCFM derivatives market, NCFM depositories operations, MCX Certified Commodity Professional and more."* In view of the above referred Noticee's emails to Shiv Baran Singh and Rakesh Prasad, complaints of Neelam Sharma and Rajesh Kumar and claims made by the Noticee on its website, I reject the contention of the Noticee that risk profile of the clients, research and investment advice

were done by the proprietor of the Noticee alone and its employees were not involved in assessing risk profile of the clients and rendering investment advice.

41. I note that Regulation 7 of the IA Regulations was amended w.e.f. September 30, 2020. Prior to September 30, 2020, Regulation 7 required that an individual registered as an IA under the IA Regulations, partner of such an IA and representatives of such IA offering investment advice to possess at all times qualification i.e. professional qualification or post graduate degree or diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or institution recognized by the central government or any state government or a recognized foreign university or institution or association or graduation in any discipline with at least five years of experience in activities relating to advice in financial products or securities or fund or asset or portfolio management. Further, regulation 7(2) of the IA Regulations required such an IA, partner of such an IA and representatives of such IA offering investment advice to possess at all times certification on financial planning or fund or asset or portfolio management or investment advisory services from NISM or any other organization or institution including FPSB or any recognized stock exchange in India, subject to NISM accreditation. Such certifications have stipulated validity period and before expiry of the same, fresh certification is mandated to ensure continuity. In absence of proof of qualification, I find that the Noticee has failed to ensure compliance with the certification and qualification requirements specified under Regulation 7 of the IA Regulations.

42. I note that sub- regulation 13 of Regulation 15 of the IA Regulations requires an IA to ensure compliance with the certification and qualification requirements specified under Regulation 7 at all times. Clause 1 of the Code of Conduct specified in Schedule III of the IA Regulations requires an IA to act honestly, fairly and in the best interest of its clients and in the integrity of the market. Clause 2 of the Code of Conduct requires an IA to act with due skill, care and diligence and to ensure that its advice is offered after thorough

analysis and taking into account available alternatives. Clause 3 of the Code of Conduct requires an IA to have and employ appropriate resources and procedures which are needed for the efficient performance of its business activities. Clause 8 of the Code of Conduct requires an IA to comply with all regulatory requirements applicable to the conduct of its business activities so as to promote best interests of clients and integrity of the market. I, therefore, find that failure of the Noticee to ensure compliance with stipulated certification and qualification proves lack of diligence and due care on part of the Noticee in performance of its role as an investment adviser. In view of the above, I find that the Noticee violated Regulation 7, 15(9), 15(13), Clause 1, 2, 3 and 8 of the Code of Conduct specified under the Third Schedule to the IA Regulations.

Improper Risk Profiling of Clients and Faulty Suitability Assessment

43. In this regard, the SCN has alleged that :-

- a. Examination of risk profile form of the complainant – Rakesh Prasad and Shiv Baran Singh revealed that risk profile form was not dated or signed. There is no evidence to suggest that risk profiling of the said complainant was communicated to them. The Noticee's auditor has stated in the Compliance Audit Report that risk profile were not available for 31 clients for FY 2018-19 and 41 clients period April 01, 2019 to January 30, 2020. One of the complainant, Pradeep Kumar Agarwal, informed that neither risk profile was done nor it was communicated to him.
- b. Risk profile questionnaire of the clients of the Noticee did not contain any question which would provide the investment objective or the purpose of the investment of the clients. Risk profile did not include necessary information, as required by the IA Regulations. The Noticee failed to carry out risk profiling of its clients properly.
- c. In most of the cases, services were being allotted to the clients prior to the communication of risk profile. Sample of such cases is as shown in the table below: -

Table No. 2

| Sl.No. | Name of the client | Date of allotment of service | Date of Risk Profile |
|---------------|---------------------------|-------------------------------------|--|
| 1 | Shiv Baran Singh | April 10, 2019 | April 11, 2019 |
| 2 | Rakesh Prasad | January 16, 2019 | January 17, 2019 |
| 3 | V Athmanathan | July 12, 2017 | On July 12, the Noticee sought details of PAN, Aadhar for carrying out KYC |

- d. The complainant viz., V. Athmanathan vide email dated July 20, 2017 communicated to the Noticee as follows: -

“Dear Ji, I was not interested to enter into share market but your company side I received persistent/consistent call promising of getting good return within 20 days in which with minimal investment in which I deposited 30,000 in the end of Mar 2017 but after that I was asked deposit within short time in one or other reason without getting assured amount. After a month I was asked to deposit rs2,00,000 as service charge to get the assured amount 20,00,000 to be transferred to my account but after difficulty when I deposited money I was told to deposit again rs90,000 so that the assured amount will be transferred to my account in which I was forced to deposit till such time of Rs around 6,00,000 but still I was asked only to deposit money repeatedly now again I have been assured of enhanced amount with repeated been asked to deposit stress fully within short period of half hour to bank account but with the prevailing different situation in this respect. This is the situation occurring in respect of me which I put to your end now. Athmanathan”

On July 12, 2017, the Noticee allotted services to V. Athmanathan and on the same date the Noticee sought details of KYC and PAN which shows that risk profile was not completed. Despite the said email dated July 20, 2017, the Noticee sold services to V. Athmanathan and collected service fee of Rs.4,71,573/-. The Noticee issued invoice no. 741 dated May 20, 2017 for the services provided during April 05, 2017 till May 19, 2017 which showed that invoice was created after completion of the service.

- e. As per the risk profiling adopted by the Noticee, the risk appetite assessment on the basis of risk score was *"Maximum total score one can*

obtain is 90, if client scores upto 30 then he/she is a low risk appetite client. If client scores between 31 to 60 then he/she is a medium risk appetite client and if he/she scores more than 61 then he/she is a high risk appetite client." The Noticee had clients whose risk profiling had not been done properly and multiple services were sold to them to extract advisory fees. Some of such clients are Pradeep Kumar Agarwal and Umakant Kushwaha.

- f. In the case of Pradeep Kumar Agarwal, he had not replied to most of the questions and his total score worked out to 11 based on scores assigned in the risk profile. However, he was assigned total score of 28 points. As per risk score, the client had low risk appetite, yet, in the risk profile he was categorized as 'very aggressive investor who is ready to take high risk'. Similarly, in the case of Umakant Kushwaha, he had not replied to most of the questions and his total score worked out to 06, based on scores assigned in the risk profile. However, he was assigned total score of 22 points. As per risk score, he had low risk appetite, yet, in the risk profile he was categorized as 'very aggressive investor who is ready to take high risk.
- g. The services offered by the Noticee were either for Medium risk or high risk clients. The Noticee sold high risk services to clients with medium risk. Some of the instances, where suitability of services has been completely ignored is shown in the table below: -

Table No. 3

| S.No. | Client name | Risk score | Risk category | Services assigned | Service category |
|-------|-------------------|------------|---------------|---|------------------|
| 1. | Ms. Neelam Sharma | 59 | Medium | Stock Option, stock cash platinum | High |
| 2. | Satvinder Singh | 58 | Medium | Stock Option, Stock Options Premium, Premium Stock Future, Stock Future and | High |

| | | | | | |
|----|------------------|----|--------|--|------|
| | | | | Platinum Future | |
| 3. | Rajesh kumar | 59 | Medium | Stock Option | High |
| 4. | Rakesh Prasad | 59 | Medium | Stock Options Premium, Platinum Future | High |
| 5. | Shiv Baran Singh | 57 | Medium | Stock Options Premium, Premium Stock Future, Platinum Future | High |

- h. In view of the above, it was alleged that the Noticee failed to carry out proper risk profiling of the clients as it did not include requisite questions to determine the objective and purpose of the investment, information about the investment objective and purpose for investment of the client was not obtained, ability and willingness of the client to accept the risk was not identified, risk profile of the clients was not communicated to the clients and risk profiling was not done for some clients. The Noticee misrepresented about the clients by categorizing them as 'very aggressive investor who is ready to take higher risk' while based on the internal risk assessment mechanism of the Noticee, the clients should have been classified as having low risk appetite. The Noticee has stated false information about the clients in the Risk Profiling Form (**RPF**) to somehow categorize the client having 'high risk' appetite. The Noticee by manipulating the risk profile of clients, has sold high risk services to low or medium risk profile clients. The Noticee is alleged to have violated regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act and Regulation 15 (1) and clauses 1, 2, 4, 5, and 8 of the Code of Conduct specified in Third Schedule to the IA Regulations read with Regulation 15 (9) of the IA Regulations, as well as Regulations 16(a)(ii), 16 (b) (ii) and 16 (e) of the IA Regulations.

44. In this regard, the Noticee has submitted that:-

- a. Risk profiling was communicated to clients through welcome email. However, in some cases there has been delay in communicating the risk profiling to the clients. The IA Regulations does not require risk profiling to be signed and dated. The auditor report has mentioned that risk profiling was not available as the Noticee could not share all details with the auditor in a timely manner. The auditor report did not mention that the Noticee failed to do risk profiling of the clients.
- b. As a practice, the Noticee relied on Risk Profiling Questionnaire ("RPQ") of the clients, approved by SEBI at the time of granting registration, in order to provide its clients with a suitable investment advice. The said RPQ contained questions pertaining to both ability of the client to absorb the risk and willingness to absorb risk which was not just limited to Gross Annual Income and existing or proposed investment. Risk assessment conducted by the Noticee included questions to assess financial ability of the clients such as – total net worth, annual income, emergency funds, surplus amount, portfolio held, liquid assets available, insurance and goals to achieve, etc., Other questions included willingness of the client to ascertain how much risk the client is willing to take in order to achieve desired financial goal/returns while taking advice from it.
- c. Risk profiling has been done prior to the service allocation. It was delay of couple of days in communicating risk profiling to the clients.
- d. After the client onboarding procedure, some clients approached and asked for high risk products stating they are competent to bear high risk products and want to trade in such segments to earn high returns. The Noticee prioritized client request over the risk profile.

45. I note that Regulation 16(a)(ii) of the IA Regulations requires an IA to obtain information from the client on investment objectives including time for which they wish to stay invested, the purposes of the investment. Regulation 16(b) of the IA Regulations require an IA to have process for assessing the risk a client is willing and able to take including (i) assessing a client's capacity for absorbing loss; (ii) identifying whether client is unwilling or unable to accept the risk of loss of capital; (iii) appropriately interpreting client responses to questions and not attributing inappropriate weightage to certain answers.

46. I note that the compliance audit report for FY 2018-2019 and period 01.04.2019 to 31.01.2020 mentioned at Serial number 9 (b) of particulars "Whether IA has done risk profiling for all clients acquired during the course of business?" In comments column of Serial No. 9(b), it is mentioned "Yes, *except clients mentioned in Annexure -2*". Annexure 2 of audit report for FY 2018-19 and period 01.04.2019 to 31.01.2020 contains 31 names and 41 names, respectively. I find that the Noticee failed to do risk profiling in respect of 31 clients in 2018-2019 and 41 clients during the period 01.04.2019 to 31.01.2020.

47. I note that the Noticee has made mere bald submission that RFQ contained question to assess both ability of the client to absorb the risk and willingness to absorb risk. However, the Noticee has not mentioned specific question in RFQ which as per the Noticee was directed to ascertain investment objective of the clients. On sample basis, I have perused risk analysis form of client- Rakesh Prasad, annexed as Annexure 16 to the SCN. I note that risk analysis form of client -Rakesh Prasad do not contain any question directed to assess investment purpose of the client. I find that the Noticee failed to obtain information from the client about its investment purpose and object of investment. I also find that the Noticee failed to put in place process to identify willingness and ability of the client to accept risk.

48. I note that the Noticee has submitted that risk profiling was communicated to clients through Welcome email as apparent from Annexure 17 and 18 to the SCN. Annexure 17 to the SCN is the welcome email dated April 11, 2019 sent by the Noticee to Shiv Baran Singh. However, no attachment is annexed with the said email. Annexure 18 to the SCN is email dated January 17, 2019 from the Noticee to Rakesh Prasad which contained risk profile as attachment thereto. Document evidencing communication of risk profile to V Athmanathan has not been provided by the Noticee. I note that the Noticee vide email dated July 12, 2017 sought copy of PAN Card, Adhar/Voter Card, etc., from V Athmanathan for further proceedings regarding KYC. However, V Athmanathan was allotted services on July 12, 2017. In view of the above, I find that the Noticee failed to communicate risk profiling to Shiv Baran and V Athmanathan.

49. I note that the Noticee has not provided any response to allegation that V. Athmanathan was not interested in taking Noticee's service. Further, V. Athmanathan was not willing and able to take risk associated with securities market but still he was offered services. I find that V. Athmanathan was provided services by the Noticee without identifying whether the client is willing or able to accept the risk of loss of capital.

50. With regard to allegation of categorizing low risk appetite clients as very aggressive investor who are ready to take higher risk, the Noticee has stated that answer to some questions in risk profiling form could not be reflected due to technical glitch. I note that the Noticee has not substantiated its submission supported with any evidence. I note that risk profile of Pradeep Kumar Agarwal and Umakant Kushwaha contain total score of 28 and 22, respectively. However, they have been categorized as aggressive investor ready to take higher risk. I find that risk profiling done by the Noticee is faulty. I find low risk clients have been categorized as client with high risk appetite and offered with high risk products/services unsuitable to their risk profiles.

51. In view of the above, I find that the Noticee has violated Regulation 15 (1) and clauses 1, 2, 4, 5, and 8 of Code of Conduct specified in Third Schedule to the IA Regulations read with Regulation 15 (9) of the IA Regulations, as well as Regulations 16(a)(ii), 16 (b) (iii) and 16 (e) of the IA Regulations. In this regard, I note that the aforesaid allegations by themselves cannot constitute 'fraud' for the purposes of the PFUTP Regulations, unless supported by evidence. I note that the Noticee should have been more careful and diligent in doing risk profiling of the clients. In view of the above, I find that the allegation of violation of Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act against the Noticee is not substantiated.

Selling multiple products/services and charging unreasonable fees to clients

52. In this regard, the SCN has alleged that the Noticee sold multiple products/services to its clients. Some of such instances are as follows: -

a. **Client Name: Ms. Neelam Sharma-**

Table No. 4

| Sl. No. | Services | Invoice Date | Service start date | Service end date | Amount as per invoice |
|---------|--------------|--------------|--------------------|------------------|-----------------------|
| 1. | Stock Option | 14.11.2017 | 15.11.2017 | 15.12.2017 | 3,000 |
| 2. | Stock Option | 06.12.2017 | 15.12.2017 | 25.12.2017 | 10,000 |
| 3. | Stock Option | 07.12.2017 | 25.12.2017 | 05.01.2018 | 10,000 |
| 4. | Stock Option | 08.12.2017 | 05.01.2018 | 15.01.2018 | 10,000 |
| 5. | Stock Option | 09.12.2017 | 15.01.2018 | 25.01.2018 | 8,500 |
| 6. | Stock Option | 20.12.2017 | 25.01.2018 | 25.03.2018 | 49,000 |
| 7. | Stock Option | 20.12.2017 | 25.03.2018 | 25.05.2018 | 5,000 |
| 8. | Stock Option | 20.12.2017 | 25.07.2018 | 25.09.2017 | 5,000 |
| 9. | Stock Option | 20.12.2017 | 25.09.2017 | 25.11.2017 | 5,000 |
| 10. | Stock Option | 22.12.2017 | 25.05.2019 | 25.07.2019 | 5,000 |

| | | | | | |
|-----|---------------------|------------|------------|------------|--------|
| 11. | Stock Option | 22.12.2017 | 25.07.2019 | 25.09.2019 | 1,800 |
| 12. | Stock Option | 25.12.2017 | 25.01.2020 | 25.05.2020 | 8,000 |
| 13. | Stock Option | 25.12.2017 | 25.05.2020 | 25.09.2020 | 5,000 |
| 14. | Stock Option | 25.12.2017 | 25.09.2019 | 25.01.2020 | 12,000 |
| 15. | Stock Option | 03.01.2018 | 25.01.2020 | 25.02.2020 | 20,000 |
| 16. | Stock Option | 04.01.2018 | 25.02.2020 | 10.03.2020 | 6,500 |
| 17. | Stock Option | 20.01.2018 | 10.03.2020 | 03.03.2020 | 4,000 |
| 18. | Stock Option | 31.01.2018 | 03.03.2020 | 03.03.2020 | 3,000 |
| 19. | Stock Option | 05.02.2018 | 03.03.2020 | 08.03.2020 | 5,001 |
| 20. | Stock Option | 13.02.2018 | 13.02.2018 | 13.02.2018 | 7,000 |
| 21. | Stock Option | 14.02.2018 | 14.02.2018 | 14.02.2018 | 5,000 |
| 22. | Stock Option | 14.02.2018 | 14.02.2018 | 14.02.2018 | |
| 23. | Stock Option | 14.02.2018 | 14.02.2018 | 14.02.2018 | 3,300 |
| 24. | Stock Option | 16.02.2018 | 16.02.2018 | 16.02.2018 | 5,000 |
| 25. | Stock Option | 17.02.2018 | 17.02.2018 | 17.02.2018 | 3,000 |
| 26. | Stock Option | 28.02.2018 | 28.02.2018 | 28.02.2018 | 3,000 |
| 27. | Stock Option | 01.03.2018 | 01.03.2018 | 01.03.2018 | 4,000 |
| 28. | Stock Option | 05.03.2018 | 05.03.2018 | 05.03.2018 | 3,000 |
| 29. | Stock Option | 17.03.2018 | 09.03.2020 | 19.03.2020 | 5,000 |
| 30. | Stock Option | 17.03.2018 | 19.03.2020 | 29.03.2020 | 5,000 |
| 31. | Stock Option | 17.03.2018 | 30.03.2020 | 10.04.2020 | 5,000 |
| 32. | Stock Option | 17.03.2018 | 11.04.2020 | 20.04.2020 | 3,500 |
| 33. | Stock Option | 19.03.2018 | 21.04.2020 | 30.04.2020 | 5,000 |
| 34. | Stock Option | 19.03.2018 | 30.04.2020 | 10.05.2020 | 5,000 |
| 35. | Stock Option | 19.03.2018 | 10.05.2020 | 15.05.2020 | 1,500 |
| 36. | Stock Option | 21.03.2018 | 16.05.2020 | 26.05.2020 | 6,000 |
| 37. | Stock Option | 21.03.2018 | 27.05.2020 | 07.06.2020 | 4,000 |
| 38. | Stock Option | 24.03.2018 | 24.03.2018 | 24.03.2018 | 6,000 |
| 39. | Stock Option | 26.03.2018 | 26.03.2018 | 26.03.2018 | 4,000 |
| 40. | Stock Option | 31.03.2018 | 08.06.2020 | 18.06.2020 | 3,000 |
| 41. | Stock Platinum Cash | 04.04.2018 | 05.04.2018 | 05.07.2018 | 4,100 |

| | | | | | |
|-------|---------------------|------------|-----------|------------|----------|
| 42. | Stock Platinum Cash | 04.04.2018 | 06.072018 | 06.10.2018 | 3 000 |
| Total | | | | | 2,73,401 |

b. **Client Name: Mr. A Sureshchand Lunkar**

Table No. 5

| Sl. No. | Services | Invoice Date | Service start date | Service end date | Amount as per invoice |
|---------|-----------------------|--------------|--------------------|------------------|-----------------------|
| 1. | Stock option | 01.01.1970 | 05.062017 | 20.07.2017 | 6,250 |
| 2. | Stock Cash | 01.01.1970 | 05.06.2017 | 20.07.2017 | 6,250 |
| 3. | Stock Option | 01.01.1970 | 21.07.2017 | 30.09.2017 | 15,000 |
| 4. | Stock Cash Premium | 01.01.1970 | 21.072017 | 30.09.2017 | 25,000 |
| 5. | Stock Cash | 01.01.1970 | 21.07.2017 | 30.09.2017 | 10,000 |
| 6. | Stock Option | 01.01.1970 | 01.10.2017 | 10.12.2017 | 6,000 |
| 7. | Stock Options Premium | 01.01.1970 | 01.10.2017 | 01.01.2018 | 70,000 |
| 8. | Stock Cash | 01.01.1970 | 01.10.2017 | 15.11.2017 | 8,000 |
| 9. | Stock Cash Premium | 01.01.1970 | 01.10.2017 | 06.11.2017 | 12,000 |
| 10. | Stock Cash Premium | 01.01.1970 | 02.01.2018 | 15.03.2018 | 25,000 |
| 11. | Stock Option | 01.01.1970 | 11.122017 | 1 1.02.2018 | 10 000 |
| 12. | Stock Option Premium | 01.01.1970 | 07.122017 | 15.03.2018 | 45,000 |
| 13. | Stock Cash Premium | 01.01.1970 | 1207.2017 | 12.032018 | 1,00,000 |
| 14. | Premium Stock Future | 01.01.1970 | 12.07.2017 | 1203.2018 | 1,00,000 |
| 15. | Stock Option Premium | 01.01.1970 | 1207.2017 | 1203.2018 | 1,00,000 |
| 16. | Bullion HNI | 01.01.1970 | 1207.2017 | 1203.2018 | 1,00,000 |
| 17. | Bullion Premium | 01.01.1970 | 12.072017 | 1203.2018 | 1,00,000 |
| 18. | MCX Combo Pack | 01.01.1970 | 12.072017 | 1203.2018 | 1,00,000 |

| | | | | | |
|-------|----------------------|------------|------------|------------|------------------|
| 19. | Stock Cash Premium | 01.01.1970 | 13.032018 | 12.072018 | 50,000 |
| 20. | Stock Option Premium | 01.01.1970 | 13.032018 | 1207.2018 | 50,000 |
| 21. | Premium Stock Future | 01.01.1970 | 13.03.2018 | 12.07.2018 | 50,000 |
| 22. | Bullion Premium | 01.01.1970 | 13.03.2018 | 12.07.2018 | 50,000 |
| 23. | Bullion HNI | 01.01.1970 | 13.032018 | 12.07.2018 | 50,000 |
| 24. | MCX Combo Pack | 01.01.1970 | 13.03.2018 | 1207.2018 | 50,000 |
| Total | | | | | 11,38,500 |

c. **Client name: Mr. Subramanian TN**

Table No. 6

| Sl. No. | Services | Invoice Date | Service start date | Service end date | Amount as per invoice |
|---------|--------------------|--------------|--------------------|------------------|-----------------------|
| 1 . | Stock Cash | 06.062017 | 05.06.2017 | 06.06.2017 | 4,000 |
| 2. | Stock Cash | 07.06.2017 | 07.06.2017 | 08.06.2017 | 5,750 |
| 3. | Stock Cash | 07.06.2017 | 27.05.2017 | 27.06.2017 | 9,746 |
| 4. | Stock Cash | 24.082017 | 28.06.2017 | 28.10.2017 | 20,700 |
| 5. | Stock Cash | 27.062017 | 27.06.2017 | 27.06.2017 | 5,175 |
| 6. | Stock Cash | 28.062017 | 17.06.2017 | 17.06.2017 | 5,175 |
| 7. | Stock Cash | 18.07.2017 | 22.06.2017 | 22.07.2017 | 15,000 |
| 8. | Stock Cash | 18.07.2017 | 24.06.2017 | 21.07.2017 | 12,535 |
| 9. | Stock Cash Premium | 25.07.2017 | 27.06.2017 | 27.07.2017 | 20,200 |
| 10. | Stock Cash Premium | 01.01.1970 | 28.06.2017 | 28.07.2017 | 21,500 |
| 11 . | Stock Cash Premium | 29.06.2017 | 29.06.2017 | 29.06.2017 | 5,975 |
| 12. | Stock Cash Premium | 01.01.1970 | 29.06.2017 | 29.06.2017 | 5,974 |
| Total | | | | | 1,31,730 |

53. In some of the instances, same service has been sold multiple times to the same client for the same period or overlapping period. This shows that Noticee collected advisory fees multiple times for the same service.

Client Name: Ms. Neelam Sharma
Table No. 7

| Sl. No. | Services | Invoice no. | Invoice Date | Service start date | Service end date | Amount as per invoice |
|---------|--------------|-------------|--------------|--------------------|------------------|-----------------------|
| 1 | Stock Option | 4018 | 14.11.2017 | 15.11.2017 | 15.12.2017 | 3,000 |
| 2 | Stock Option | 4454 | 20.12.2017 | 25.07.2018 | 25.09.2017 | 5,000 |
| 3 | Stock Option | 4455 | 20.12.2017 | 25.09.2017 | 25.11.2017 | 5,000 |
| 4 | Stock Option | 4451 | 20.12.2017 | 25.01.2018 | 25.03.2018 | 49,000 |
| 5 | Stock Option | 5058 | 13.02.2018 | 13.02.2018 | 13.02.2018 | 7,000 |
| 6 | Stock Option | 5059 | 14.02.2018 | 14.02.2018 | 14.02.2018 | 5,000 |
| 7 | Stock Option | 5060 | 14.02.2018 | 14.02.2018 | 14.02.2018 | 4,200 |
| 8 | Stock Option | 5061 | 14.02.2018 | 14.02.2018 | 14.02.2018 | 3,300 |
| 9 | Stock Option | 5088 | 16.02.2018 | 16.02.2018 | 16.02.2018 | 5,000 |
| 10 | Stock Option | 5089 | 17.02.2018 | 17.02.2018 | 17.02.2018 | 3,000 |
| 11 | Stock Option | 5029 | 28.02.2018 | 28.02.2018 | 28.02.2018 | 3,000 |
| 12 | Stock Option | 5219 | 01.03.2018 | 01.03.2018 | 01.03.2018 | 4,000 |
| 13 | Stock Option | 5281 | 05.03.2018 | 05.03.2018 | 05.03.2018 | 3,000 |
| 14 | Stock Option | 5543 | 24.03.2018 | 24.03.2018 | 24.03.2018 | 6,000 |
| 15 | Stock Option | 4525 | 25.12.2017 | 25.01.2020 | 25.05.2020 | 8,000 |
| 16 | Stock Cash | 4640 | 03.01.2018 | 25.01.2020 | 25.02.2020 | 20,000 |
| 17 | Stock Option | 4655 | 04.01.2018 | 25.02.2020 | 10.03.2020 | 6,500 |
| 18 | Stock Option | 4817 | 20.01.2018 | 10.03.2020 | 03.03.2020 | 4,000 |
| 19 | Stock Option | 4980 | 31.01.2018 | 03.03.2020 | 03.03.2020 | 3,000 |
| 20 | Stock Option | 5011 | 05.02.2018 | 03.03.2020 | 08.03.2020 | 5,001 |

54. Within a few months' of association, the Noticee sold large number of services to the clients and collected substantial amounts by way of fees. Further, the Noticee sold newer products to its clients so as to receive more fees from the

clients, even though the subscription period for products earlier sold was not yet over. In most of the cases, amount of advisory fees charged was more than the amount of investment by the clients. Details of some of the clients who have been charged more advisory fees than the amount of investment is tabulated as under: -

Table No. 8

| Sl. No | Name | Period for which products/services sold | No. of products/packages sold | Current Investment Amount as per Risk Profile | Annual Income | Amount of fees collected | Investment Experience |
|--------|-----------------------|---|-------------------------------|---|--------------------|--------------------------|-----------------------|
| 1 | Shiv Baran Singh | 12/04/2019 to 16/09/2019 | 11 | Less than 2 Lakh | 2.5-5 Lakh | 274,000 | 3-7 Year |
| 2 | Varghese TL | 17/06/2019 to 30/11/2019 | 06 | Less than 2 Lakh | 2.5-5 Lakh | 2,70,515 | Less than 1 Year |
| 3 | Rakesh Prasad | 18/01/2019 to 15/06/2019 | 15 | Less than 2 Lakh | 2.5-5 Lakh | 1,99,714 | Less than 1 Year |
| 4 | A Sureshchand Lunkar | 05/06/2017 to 12/07/2018 | 24 | 2-5 Lakh | 5-10 Lakh | 11,38,500 | 1-3 Year |
| 5 | Pradeep Kumar Agarwal | 14/03/2018 to 22/03/2018 | 16 | Nil | Nil | 2,36,298.1 | Nil |
| 6 | Athmanathan | 05/04/2017 to 25/05/2018 | 22 | Less than 2 Lakh | 2.5-5 Lakh | 4,71 ,573 | Less than 1 Year |
| 7 | Satvinder Singh | 24/04/2019 to 15/10/2019 | 13 | Less than 2 Lakh | Less than 2.5 Lakh | 2,23,010 | Less than 1 Year |

55. It has been alleged that the Noticee has not been fair and transparent in its dealing with clients regarding the fees charged to the client. The Noticee sold multiple products/services for collecting unreasonably high fees by defrauding its clients. The Noticee is alleged to have violated Regulation 15 (1), 17 (a), (d) and (e) of the IA Regulations, Clauses 1, 2 and 6 of the Code of Conduct as mentioned in the Third Schedule to the IA Regulations read with regulation 15 (9) of the IA Regulations. Further, the Noticee is alleged to have violated

Regulations 3 (a), (b), (c), (d) of PFUTP Regulations, 2003 read with section 12A (a), (b) and(c) of SEBI Act, 1992.

56. In this regard, the Noticee has submitted that there is nothing wrong in taking an advance payment for services as the client gets discount for opting of service in advance. On September 23, 2020, SEBI has issued circular restricting advance payment for more than 2 quarters. With regard to multiple services, the Noticee has submitted that nature of services offered were different and clients were made aware of the same fact. There were clients involved in trading in derivatives as well as cash segment. Hence, multiple services were offered to them. With regard to repeated sale of service for overlapping period, the Noticee has submitted that invoice has not been updated for extended period due to typo error. Clients requested for providing different services (stock options, futures, cash and index) at a time. Hence, the Noticee provided them the requisite service. Regarding annual income and current investment amount of the client, the Noticee has submitted that clients do not fill correct income details or they don't feel safe to disclose their correct income due to personal/taxation reasons. As clients were able to pay high fees, it proves that client's annual income and their proposed investment amount is much higher than that which is mentioned. With regard to charging exorbitant fees, the Noticee has submitted that the limit or restriction or cap on quantum of fees to be charged from the clients has come from April 01, 2021.

57. Under the head of faulty risk profiling, it is noted that in some of the instances mentioned therein the Noticee did not do risk profiling at all. In case where risk profiling was done, the risk profiling of the clients was faulty as RFQ did not contain questions to ascertain investment objective and investment purpose of the client. The Noticee categorized low risk clients as clients with ability and willingness to take high risk. In view thereof, I find that the investment advice provided by the Noticee was inappropriate to the risk profile of the client. The Noticee had no reasonable basis for believing that the recommendation or

transaction entered met with the client`s investment objectives or were such that the client was able to bear any related investment risks consistent with investment objectives and risk tolerance or were such that the client had necessary experience and knowledge to understand the risks involved in the transaction. Further, I find that the advice or recommendation given by the Noticee were based upon assessment that structure and risk reward profile of financial product is consistent with client`s experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

58. I note that vide SEBI (Investment Advisers) (Amendment) Regulations, 2020, which came into effect from September 30, 2020, Regulation 15A was inserted in IA Regulations which provided that an investment adviser shall be entitled to charge fees for providing investment advice from a client 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 investment advisers which inter-alia provided for the manner of charging of fees. In view thereof, I find that prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020, 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, even prior to September 23, 2020, mandated investment adviser 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 SEBI (Investment Advisers) (Amendment) Regulations, 2020, cannot be accepted. I find that even prior to the 2020 Amendment, the investment adviser, especially having been engaged by the client in a fiduciary capacity, was 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, he was free to charge any fees cannot be accepted.

59. I note that the IA Regulations mandate that an investment adviser shall act in a fiduciary capacity towards its clients and is required to abide by the Code of

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. Further, the IA Regulations also mandate that the fees charged by the investment adviser shall be fair and reasonable. I find that the Noticee in order to maximize its advisory fees sold multiple services to the clients before the completion of earlier service without having any regard for the interest of the client or suitability of product. In view of the above, I find that the Noticee has violated Regulation 15(1) and 15(9), Regulations 17(a), (d) and (e) of the IA Regulations read with Clauses 1, 2 and 6 of the Code of Conduct specified in Third Schedule of the IA Regulations. However, I find that the allegation of violation of Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act will not sustain.

Maintenance of Records

60. In this regard, the SCN has alleged that the Noticee's website mentioned that the salient features of the products include "Complete Follow up and support will be provided on direct mobile number". It also mentioned that the process adopted by the Noticee included discussion with the sales executives. As per the complaints, pitching of product was done by employees of the Noticee over telephone. Also, the clients were called by the employees of the Noticee for KYC and risk profile process. Telephonic conversation between employees of the Noticee with clients formed part of the information pertaining to risk profiling of client and suitability of the product to client, which should have been maintained in terms of Regulation 19(2) of the IA Regulations. The Noticee has not maintained record of communication with clients during risk profiling and suitability assessment of advice/selection of advisory product/services and also not provided the rationale for arriving at investment advice. The Noticee has, thus, violated Regulation 19(1) and (2) of the IA Regulations.

61. In this regard, the Noticee has submitted that it has maintained each and every record; however, the same could not be made available to inspection authority due to unforeseen reasons. The Noticee has provided advice to its clients through SMS and provided telephonic support to the clients. Maintaining the record of call recording was not applicable to the Noticee as it was providing advice orally. Prior to January 2021, the IA Regulations did not mandate maintenance of telephonic records.

62. I note that Regulation 19(1)(b), 19(c), (e), (f) and 19(2) of the IA Regulations require an investment adviser to maintain record, either in physical or electronic form, of risk profiling and risk assessment of the client; suitability assessment of the advice provided; investment advice provided; whether written or oral and duly signed and dated rationale for arriving at investment advice, for a minimum period of 5 years. Further, Regulation 19(2) requires that where records are required to be duly signed and maintained in electronic form, such record shall be digitally signed. I find that the Noticee has failed to provide record of investment advice provided to the clients and the signed rationale for arriving at investment advice. From a reading of Regulation 19(1)(e) and 19(2), I note that record of oral communication is required to be maintained where investment advice is provided orally. In the present case, investment advice was being provided telephonically and therefore, the Noticee should have maintained telephonic records of investment advice. In view thereof, I find that the Noticee has violated Regulation 19(1) and 19(2) of the IA Regulations.

Misrepresentation and mis-selling

63. The SCN has alleged that the Noticee's website i.e. investmentvisor.com contained details about its research team, which read as follows:

"Apart from rich experience, our team who prepares and delivers free and paid content and trading and investing advice have following degrees and educational qualifications. They includes MBA finance, Certificate in taxation, International Banking and International finance

master degree, ICWA degree holder, intermediate CAs, intermediate CSs, CAs, CSs, CFAs, NCFM (NSE's Certification in financial markets) capital markets, NCFM derivatives market, NCFM depositories operations, MCX Certified Commodity Professional and more."

64. I note that as per the employee details submitted by the Noticee, no employee of the Noticee was NISM qualified or possessing qualifications/ certification in taxation, International Banking, ICWA, CAs, CSs, CFAs. The above claim on the website of the Noticee regarding qualification of research team was found to be false.

65. Further, the website of the Noticee featured testimonials which are tabulated as under: -

Table No.9

| S.no | Name | Testimonial |
|-------------|-------------------|--|
| 1 | Mr. D.K. Das | <i>Being a small trader, I want a consultant who can give me calls with more accuracy on consistent basis and on reasonable price. I want to thank you to help me earn really well.</i> |
| 2. | Sarika Gupta | <i>MCX Recommendations by IVisors helped me in booking profits. The support team from IVisors is sending complete Entry/Exit/Book Profit SMS of each and every call. Its really helpful Thanks</i> |
| 3. | Sumit Shrivastava | <i>"No Doubt" IV is the best advisory I have seen in India. Expertise support and services, thanks a lot for providing advice and recovering back with a good profit when I was in huge loss.</i> |
| 4. | Amit Jain | <i>I had tried many advisories earlier but the kind of live support that i get from 'visors is amazing, they just do not feed you calls but also educate u in order to understand the in and outs of the market, its never risky when u are with Investment Visor.</i> |
| 5. | Mr. Mappa Roy | <i>I earned huge profit in futures trading in your stock futures assured services. You are giving very good tips and return is awesome.</i> |

66. It is also alleged that one of the employee (Krishna Kant) of the Noticee called one of the Officers of SEBI ILO on April 19, 2018 during which the employee, inter alia, informed as mentioned hereunder.

- a. Daily average return being delivered or given by the calls of investment visor on the invested amount of the clients is around 20 to 30%.
- b. Trading of the client through their Demat account and trading account can be done by the executive of investment visor.
- c. Risk profiling of the client is being done by SEBI-Mumbai
- d. Total number of client for investment visor is 35000.
- e. Even though the risk appetite of the client is low, the client can trade in option, future and other risky products.

The above statement was confirmed by Mr. Praveen Verma, proprietor of Investment Visor, in his letter dated April 19, 2018.

67. Further, it is alleged that the above acts of making false claims on the part of the Noticee induced the clients to avail the advisory services of the Noticee. Thus, the Noticee failed in its responsibility to act in fiduciary capacity to its clients, entrusted upon it under regulation 15 (1) of the IA Regulations and to act with honesty and fairness in violation of clause 1 of Code of Conduct as specified under Third Schedule read with regulation 15(9) of IA Regulations. Further, on account of misrepresentation and inducement of clients, the Noticee is alleged to have violated regulation 3 (a), (b), (c), (d), 4(2)(k) and (s) of the PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act.

68. The Noticee has submitted that its IT person had referred to few websites and copied some of the contents i.e. testimonial and research page from those websites to the website of the Noticee. The Noticee had no fraudulent intention. With respect to call made by employee of the Noticee, the Noticee has submitted that the said employee was just illustrating accuracy levels and returns. The Noticee has confirmed to SEBI in writing that no such practice, as claimed by the Noticee, were followed by the Noticee.

69. I note that the Noticee has failed to provide documents in support of testimonials made on its website. As noted above, none of the employees of the Noticee was possessing qualifications as displayed on its website. Further, an employee of the Noticee made false claims over the phone call made to SEBI Indore Local Office. I note that the Noticee is responsible for acts of its employees. In view thereof, I find that the Noticee by posting fake testimonials, false information regarding qualification of its research team and false claims over phone has acted dishonestly, unfairly, negligently and against the interest of the investors and the integrity of the securities market, thereby, the Noticee has violated Regulation 15 (1) and Regulation 15(9) of the IA Regulations read with Clause 1 of Code of Conduct as specified under Third Schedule to the IA Regulations.

70. Allegations made in the SCN raises a question whether such display of false information regarding qualification and testimonial on the website and making false claims over phone are sufficient to hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(2)(k) and 4(2)(s) of PFUTP Regulations. Sub Regulation (a) and (d) of Regulation 3 of the PFUTP Regulations deal with fraudulent dealing in securities and engaging in any business which operates as deceit upon any person in connection with any dealing in securities. As the misrepresentations have the effect of inducing gullible investors to believe the claims to be true and to approach the Noticee for such investments, I am inclined to hold the Noticee liable for violation of the said provisions. Moreover, I have held in paragraph no. 35 above that the Noticee by promising assured profit/unrealistic returns to its clients has violated Regulation 3(a), 3(d), 4(2)(k) and 4(2)(s) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act. Thus, I find that the Noticee has violated Regulations 3(a), 3(d), 4(2)(k) and 4(2)(s) of the PFUTP Regulations read with Section 12A (c) of SEBI Act.

Collection of GST from clients even after cancellation of GSTN

71. In this regard, the SCN has alleged that the Noticee suo-moto cancelled the GSTN number with effect from December 27, 2018. Even after cancellation of registration of GSTN, the Noticee continued to charge GST from its clients. The Noticee collected fees in the name of GST but failed to deposit the same with tax department. It is alleged that the Noticee violated regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Section 12A(a), (b), (c) of the SEBI Act and regulation 15(9) of the IA Regulations read with clause 8 of the Code of Conduct as specified under Third Schedule to the IA Regulations.

72. In this regard, the Noticee has submitted that there were some discrepancies in 2018 with respect to the GST amount paid, therefore, the Noticee paid the due GST amount in full afterwards. The Noticee was not aware that its GST Registration was cancelled suo moto by the GST Department as its Chartered Accountant had failed to file returns on time. Consequently, the Noticee inadvertently kept collecting GST amount from its clients.

73. I note that SEBI vide letter dated August 19, 2020 intimated Central Excise and Customs Office, Indore about cancellation of GSTN and collection of GST by the Noticee from clients even after cancellation of GSTN.

74. I find that an apparent illegality committed by an Intermediary under any other law can be taken note, to the extent it reflects the general conduct of such intermediary. By charging GST amounts from the clients even after cancellation of GSTN, the Noticee has failed to act in the manner required of it as a registered IA. I also note that as per the Code of Conduct for IAs, an investment advisor is required to comply with all regulatory requirements applicable to the conduct of its business activities. Clause 8 also requires the Noticee to promote the best interest of its clients and integrity of the market. The administration of GST does not fall within purview of SEBI. However,

levying a monetary liability on the clients under the head of GST shows the general conduct of the entity. Thus, I find that the Noticee has failed to abide by Clause 8 of Code of Conduct for Investment Advisors as specified in the Third Schedule of IA Regulations read with Regulation 15 (9) of the IA Regulations. However, in my view, the violation of regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Section 12A(a), (b), (c) of the SEBI Act is not attracted on this count.

75. To conclude, I note that the Noticee has failed to furnish information and documents sought by SEBI prior to, during and after the inspection. Consequent to non-cooperation of the Noticee, the inspection of the Noticee could not be conducted by SEBI officials. Further, the Noticee failed to resolve SCORES complaints and upload ATR within prescribed timelines; promised assured profit and unrealistic returns to clients; failed to comply with requisite qualification and certification requirements specified by the IA Regulations; failed to do risk profiling of clients in terms of provisions of IA Regulations; failed to do suitability assessment of clients and sold products inappropriate to risk profile of the clients; charged unreasonable fees to clients by selling multiple products/services; and failed to maintain proper records. Further, the Noticee displayed false information on its website. All the above constitute violations of the provisions of SEBI circulars, Regulations and the Code of Conduct, found in the foregoing paragraphs. Besides this, the Noticee is liable for commission of violation of the provisions of PFUTP Regulations as it engaged in promising assured returns and misled the clients by displaying false information on its website. Thus, in view of the facts and circumstances discussed above, I am convinced that this is a fit case for passing appropriate directions against the Noticee.

76. At this juncture, I note that the Noticee in its reply dated February 27, 2023 has submitted that it has stopped operations and no service/amount is due to any client. Further, the Noticee has not received any new complaint during the

past 3 years. Further, it is submitted that the Noticee has refunded service amount to the clients who were dissatisfied with the services. I am inclined to view these factors as mitigating circumstances while deciding upon appropriate directions.

77. It is also worth bearing in mind that the Noticee was a registered IA and that the scope of directions under Section 11B of the SEBI Act is remedial in nature. In a parallel enquiry proceeding, I have cancelled the registration of the Noticee.

78. With respect to the quantification of penalty, I note that the Noticee is registered with SEBI as an IA since August 28, 2015. I note that the Noticee was an active IA for a period of about 5 years. The Noticee has been found to have violated provisions of PFUTP Regulations by promising assured returns, making misleading claims on its website and mis-selling to clients. Further, the Noticee has failed to cooperate with the statutory inspection and violated the Code of Conduct requirements. Therefore, it is felt appropriate to impose penalty commensurate to the violations besides appropriate directions, stated at para 75 above.

ORDER–

79. In view of the above, I, in exercise of powers conferred on me under Section 11(1), 11(4), 11(4A), 11B(1), 11B(2) of the SEBI Act read with Section 19 of SEBI Act, 1992, do hereby pass the following directions, in the interest of investors and market integrity:

- a. The Noticee shall communicate this order to the complainants whose complaints are pending resolution, within 15 days from the date of receipt of this order;

- b. The Noticee shall resolve, including by way of refund of fees charged or by way of settling the transaction in dispute, all complaints pending against it in the SCORES portal and/or otherwise, within a period of 30 days from the date of receipt of this order;
- c. The Noticee shall file a report of resolution of complaints, as directed at para 79(b) above, with SEBI addressed to the Division Chief, Division of Post -Inspection Enforcement Action, Market Intermediaries Regulations and Supervision Department, SEBI, SEBI Bhavan-II, Plot No. C7, G-Block, Bandra Kurla Complex, Bandra (East) Mumbai-400051, within a period of 45 days from the date of receipt of this order;
- d. The Noticee is imposed with monetary penalties as provided hereunder: -

| Violation | Provision under which penalty is imposed | Amount of Penalty (INR) |
|---|---|-------------------------------------|
| Regulation 7, 13(a), 15 (1), 15(13), 15(9), 16(a)(ii), 16(b)(iii), 16 (e), 17(a), 17(d), 17(e), 19(1) and 19(2) of the IA Regulations read with clause 1, 2, 3, 4, 5, 6, 8 of Code of Conduct as specified in Third Schedule to the IA Regulations. | Section 15EB and 15HB of the SEBI Act | Rs.5,00,000/- (Rupees Five Lakh) |
| Regulation 24(3), 25(1), 25(2) of the IA Regulations | Section 15(A)(a) of the SEBI Act | Rs.1,00,000/- (Rupees One Lakh) |
| SEBI circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) of the IA Regulations | Section 15 C of the SEBI Act | Rs.1,00,000/- (Rupees One Lakh) |
| Regulation 3(a), 3(d), 4(2)(k) and 4(2)(s) of the PFUTP Regulations read with Section 12A(c) of SEBI Act. | Section 15 HA of the SEBI Act | Rs.5,00,000/- (Rupees Five Lakh) |
| Total | | Rs.12,00,000/- |

- e. The Noticee shall remit / pay the said amount of penalty, within 45 days from the date of receipt of this order, 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 EDs/CGMs -> 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 SEBI at address mentioned in para 79(c) above and also to e-mail 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 : (like penalties /disgorgement /recovery/settlement amount/legal charges along with order details) | |

- e. This order shall come into force with immediate effect.

Date: July 31, 2023

Place: Mumbai

GEETHA G
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA