QJA/AS/WRO/WRO/23920/2022-23

BEFORE SECURITIES AND EXCHANGE BOARD OF INDIA
EXECUTIVE DIRECTOR, SHRI AMARJEET SINGH

FINAL ORDER UNDER SECTIONS 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) READ WITH SECTIONS 15HA, 15HB (FOR VIOLATIONS PRIOR TO 08.03.2019), 15EB (FOR VIOLATIONS SUBSEQUENT TO 08.03.2019) AND 15I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, REGULATION 35 OF SEBI (INTERMEDIARIES) REGULATIONS, 2008 AND REGULATION 28 OF SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013

In respect of:

***Noticee*'s Name**	**PAN**	**Registration no.**
Mr. Mukesh Vishwakarma, proprietor of Striker Stock Research	AJSPV4217F	INA000008516

In the matter of activities of Mr. Mukesh Vishwakarma, proprietor of Striker Stock Research as an Investment Adviser

1. Securities and Exchange Board of India ("SEBI") received multiple complaints on its SCORES platform against Mr. Mukesh Vishwakarma, proprietor of Striker Stock Research, a SEBI registered Investment Adviser ("IA"). Thereafter, SEBI conducted an examination of the complaints and noticed violations of provisions of SEBI (Investment Advisers) Regulations, 2013 ("IA Regulations"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations") and Securities and Exchange Board of India Act, 1992 ("SEBI Act") by Mr. Mukesh Vishwakarma, proprietor of Striker Stock Research.

2. Pursuant to the examination, a show cause notice dated May 21, 2021 ("the SCN") was issued by SEBI to Mr. Mukesh Vishwakarma, proprietor of Striker Stock Research ("the *Noticee"*) calling upon him to show cause as to why suitable

directions under sections 11(1), 11(4) and 11B(1) of the SEBI Act read with regulation 35 of SEBI (Intermediaries) Regulations, 2008 ("Intermediaries Regulations") and regulation 28 of IA Regulations should not be issued against him, and why penalty under sections 11B(2) and 11(4A) read with sections 15HA, 15HB (for violations prior to March 8, 2019) and section 15EB (for violations subsequent to March 8, 2019) of SEBI Act read with rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("Penalty Rules") should not be imposed on the *Noticee.*

CONTENTS OF THE SCN AND THE ALLEGATIONS

3. The SCN contained the following observations and allegations against the *Noticee* with regard to SEBI's examination of his activities:

3.1. From February 8, 2018 to October 28, 2020, a total of 103 complaints were received against the *Noticee* in SCORES portal. Clients who paid fees of ₹3,50,000 and above during the period April 1, 2018 to March 31, 2020 including those who lodged complaints on SCORES (and were charged fee in excess of ₹3,50,000) were taken as sample for the purpose of further examination. 26 such clients were sampled for the said purpose.

3.2. The examination by SEBI was carried out on the basis of documents / evidences available in SCORES and submitted by the complainants. Further, documents such as Know Your Client ("KYC") forms, Risk Profiling forms ("RPF"), client master, suitability policy, sample copy of risk assessment form, list of various products offered including products offered category-wise and details of bank accounts were also obtained from the *Noticee* through emails.

3.3. On the website of the *Noticee* (www.strikerstockresearch.com), details of 4 bank accounts were found viz., HDFC bank, ICICI bank, Axis bank and State Bank of India.

3.4. Vide email dated August 14, 2020, details of bank statements were sought from the aforesaid banks. Observations from bank statements are mentioned below:

S. No.	Name of Bank and account number	Period for which bank statement sought	Amount of credit (₹)	Status of account
1	Axis Bank (917020064007116)	From the date of account opening (04-11-2017) till 09-06-2020	6,82,82,187	The account is active and was last operated on 09-06-2020. Available balance as on 09-06-2020 is Nil.
2	ICICI Bank (384805500154)	From the date of account opening (31-07-2018) till 19-08-2020	2,52,07,883	The account is active and was last operated on 19-08-2020. Available balance as on 19-8-2020 is ₹ -2,25,887 (In negative)
3	State Bank of India (37213018118)	From the date of account opening (04-10-2017 till 31-12-2017)	18,56,456	The account is closed.
4	HDFC Bank (50200028720170)	From the date of account opening (28-12-2017) till 14-08-2020	5,43,99,895	The account is active and was last operated on 14-08-2020 Available balance as on 14-08-2020 is ₹ 1,313.

3.5. The subsequent paragraphs bring out the allegations levelled against the *Noticee* in the SCN based on the examination of SEBI:—

- **<u>Products meant for high risk bearing clients sold to medium risk bearing clients:</u>**

3.6. From the analysis of products / services offered to various categories of clients vis-à-vis their risk profile and the client master provided by the *Noticee*, it was observed that the *Noticee* sold his products / services meant for the clients categorized as ‘High Risk’ to clients having ‘Medium Risk’ appetite. Out of 26

sample clients, 17 were categorized under Medium Risk category. Out of those 17 clients, *Noticee* sold high risk category products to 14 clients. It is alleged that the act of selling products, meant for 'High Risk' clients, to 'Medium Risk' clients is deliberate on the part of the *Noticee* to somehow sell different products to clients in order to earn maximum fees from clients.

3.7. In view of above, it is alleged that *Noticee* has violated regulation 17(a), (c), (d) and (e), regulation 15(1) and clauses 1 and 2 of the Code of Conduct specified in Schedule III read with regulation 15(9) of IA Regulations.

- **Unfair and unreasonable amount of fees charged from Clients:**

3.8. Out of the 26 sample clients, it was observed that for 17 clients, fees received was more than annual income of the clients, as disclosed in the respective RPF of the clients. The details of fees received were obtained from client master provided by the *Noticee* vide email dated August 24, 2020.

3.9. Further, it was also observed that for 20 clients, *Noticee* charged fees more than the proposed investment disclosed by clients in their RPF. The *Noticee* during the risk profiling of the clients had received all information from its clients like proposed investment amount, annual income and other financial details. Having known these financial details, the *Noticee* charged exorbitant amount of fees from its clients, which in certain cases has been more than eight times of the client's annual income / proposed investment.

3.10. It is alleged that the *Noticee* deceived his clients by extorting fees which were more than the investment amount or total annual income of the client. It is also alleged that the *Noticee* did not act with due skill, care, diligence and honesty while charging advisory fees from the clients. Further, considering the fees charged from the client vis-à-vis the annual income and / or proposed investment by the client, it is alleged that fair and reasonable fees was not charged by the *Noticee*.

3.11. In view of the above, it is alleged that the *Noticee* failed to abide by clause 1, 2 and 6 of Code of Conduct for IA provided in Third Schedule read with regulation 15(9) of IA Regulations and also violated regulation 15(1) of IA Regulations.

3.12. Considering the *modus operandi* adopted by the *Noticee*, discussed hereinabove, it is also alleged that the *Noticee* was not practicing investment advisory in the manner envisaged under the IA Regulations, and was knowingly acting in a deceitful manner by:

a) selling products meant for high risk category clients to medium risk category clients.

b) charging fees from clients which are disproportionate to their annual income / proposed investment.

3.13. It is alleged that the above discussed non-genuine and deceptive "advisory" activities of the *Noticee* are, *prima facie*, fraudulent and are covered under the definition of "fraud" under Regulation 2(1)(c) of the PFUTP Regulations. As alleged, the *Noticee*, through his fraudulent acts/ schemes has violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act and regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations.

- **<u>Promise of assured / guaranteed unrealistic returns to its Clients:</u>**

3.14. Complaint of one Mr. Amit Kumar was received in SCORES wherein complainant had submitted copies of various emails sent by the *Noticee*. One such email read as under:

Date of email	**Content of email**
28-09-2018	"As per telephonic conversation with our executive we are send our service proposal for holding plan, we are planning for holding the using amount will be 85,000 and we will get the profit 2,10,000 till 15 to 20 October 2018"

3.15. On the basis of the content of the email, it is alleged that the *Noticee* assured returns by mentioning assured profit with specified duration of 15-20 days [i.e. profit of 2,10,000 on an investment of 85,000].

3.16. Another person named Mr. Manish Vyas filed a complaint on SCORES whereby he submitted email received from the *Noticee* and call data records exchanged between him and executives of the *Noticee*. On the basis of the email / telephonic call record, it is alleged that executive of the *Noticee* assured profit of ₹ 3,50,000 through telephonic conversation and the same commitment was given by the *Noticee* through their email dated July 6, 2019.

3.17. One more person named Mr. Ratan Pandey complained on SCORES wherein he provided call data records exchanged between complainant and executives of the *Noticee*. In view thereof, it is alleged that executive of the *Noticee* without any basis, provided assurance of guaranteed returns in the market. Executive was providing assurance of committed profit of ₹5,50,000 and the service charges for the same would be of ₹1,00,000 to ₹1,50,000.

3.18. It is alleged that the *Noticee* induced its clients by promising them assured / expected unrealistic profits. Extracts of the call recordings of the complaints show that the complainants were given to understand that assured returns will be delivered by the *Noticee*. It is alleged that by making / promising assured / expected profits and unrealistic returns on investments regardless of the market segment or security in which the investment is made, *Noticee* has indulged in fraudulent practices knowing fully well that such promise is not only practically impossible but also not permissible under the law and would be misrepresenting the truth by deceiving the investors under the scheme or artifice. It is alleged that such representation is fraudulent and is covered within the definition of “fraud” as defined under regulation 2(1)(c) of PFUTP Regulations. Therefore, it is alleged that the *Noticee* had violated regulations 3(a), (b), (c), (d) of PFUTP Regulations read with sections 12A(a), (b) and (c) of SEBI Act. Further, the aforesaid act of the *Noticee* has also led to the alleged violation of regulation

15(1) of IA Regulations and clauses 1 and 2 of Code of Conduct for IA as specified in Schedule III read with regulation 15(9) of IA Regulations.

- **Failure to redress client's grievances:**

3.19. One Mr. Shakeel Ahmed filed a complaint on SCORES and provided call data records exchanged between the complainant and executive of the *Noticee*. From the conversation it was observed that the client had subscribed to one of the services of the *Noticee* and had a complaint with regard to services on SCORES. The complaint was forwarded by SEBI to the *Noticee.* Instead of resolving client's grievance, the *Noticee* stopped providing services for which it charged fees from client and forced him to withdraw complaint from SCORES.

3.20. As per regulations 21(1) and 21(2) of IA Regulations, an investment adviser is required to redress client's grievances promptly and should have adequate procedure for expeditious grievance redressal mechanism.

3.21. On basis of the above it is alleged that the *Noticee* failed to redress client's grievances promptly in violation of regulation 21(1) and 21(2) of the IA Regulations.

- **Misrepresentation to clients:**

3.22. A Complainant named Mr. Manish Vyas submitted various call records exchanged with *Noticee*'s representative. From the call records, it was observed that the executive of the *Noticee* provided wrong information to the client. For instance, Mr. Mukesh Vishvakarma is the sole proprietor of Striker Stock Research but instead of providing correct information to client, executive provided details of some other person called Aaryan thereby misleading client.

3.23. Another complainant Mr. Piyush Patel also submitted call records exchanged with the *Noticee*'s representative. From the conversation, it was noticed that the representatives of *Noticee* provided misinformation to clients. It

is noted that the executive misled the client by saying that there are Board of Directors of Striker Stock Research, whereas, it is a proprietary firm and the Proprietor is Mukesh Vishvakarma.

3.24. A person named Mr. Raman Kumar also filed a complaint along with call records exchanged with *Noticee*'s representative which revealed that the representatives of IA provided, *inter-alia*, following misinformation to its clients:

a) trading was done in US Dollars and conversion is required into Indian currency;
b) profit is credited into escrow account and then transferred to the client's savings account;
c) demat is dabba demat;
d) a security code is generated and client has to pay the amount generated through the security code.

3.25. Complainant Mr. Raman Kumar had provided 8 call data records. After hearing all the 8 calls recordings, it is observed that, the client was lured to pay ₹ 4,67,825 (As per client master and invoices provided by the *Noticee*) by promising more and more returns from the market. *Noticee* charged client various types of fees fraudulently like file settlement fees, currency convertible fees, security code generation charges, etc. The client was again and again forced to pay the amount by showing fictitious profits. It was also noted from the conversation that *Noticee* kept charging amount from client in the name of investment and fees and client kept paying to the *Noticee* thinking that the *Noticee* is doing investment on his behalf but the *Noticee* under the garb of providing investment advice received a total of ₹ 4,67,825.

3.26. The *Noticee* provided wrong information to the clients and misrepresented in order to sell his services to client. By indulging in the above act, the *Noticee* failed to abide by Clauses 1 and 2 of Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations read with Regulation 15(9) of IA Regulations.

3.27. It is also alleged that the *Noticee* (through its employees / representatives) misrepresented the client regarding its proprietor and its legal status. Further, it is alleged that the *Noticee* has committed fraud with the client by receiving fees in the name of investment. The above act on the part of the *Noticee* come under the definition of 'fraud' as defined in Regulation 2(1)(c) of PFUTP Regulations. On account of the above, it is alleged that the *Noticee* has violated Regulation 3(a),(b),(c) and (d) of PFUTP Regulations read with section 12(A)(a),(b) and (c) of SEBI Act.

- ***Noticee* handled client's demat account:**

3.28. A complainant Mr. Krishna Madhaw lodged SCORES complainant and provided various call data records of communication that took place between the executive of the *Noticee* and the complainant.

3.29. It was observed from the said call data records that *Noticee*'s executive was asking for reset of client password which had expired. Further, the executive also asked the client to deposit money in his demat account and was given a commitment that the rest of the things would be taken care of by Striker Stock Research. As per the terms and conditions provided in Annexure A of the SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, *Investment Adviser shall not manage funds and securities on behalf of the client and that it shall only receive such sums of monies from the client as are necessary to discharge the client's liability towards fees owed to the Investment Adviser*. From the above, it is alleged that *Noticee* was involved in managing funds of its clients and thereby violated aforesaid provision of the SEBI circular dated September 23, 2020.

- ***Noticee* received fees from clients before starting of its services:**

3.30. The details of invoices issued to clients were sought from the *Noticee* for the sample clients. The invoices contained the information with regard to date

of invoice, period for which the service was subscribed, amount charged for the services, etc. From the analysis of said invoices, it was observed that the fees from the clients was received much before the start of the service period.

3.31. It was observed that *Noticee* was collecting fees from its clients before start of its service—such difference ranging from 309 days to 61 days. Out of 26 sample clients, in case of 11 clients, *Noticee* charged fees much prior to start of its services. Amount of advance fees charged from clients ranged from ₹ 3,000 per client to ₹ 3,32,500 per client.

3.32. It is alleged that the said act of receiving fee from clients before start of services is not fair and in the best interests of the clients and the *Noticee* by indulging in the said act, failed to abide by Clauses 1 and 6 of Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations read with Regulation 15(9) of IA Regulations.

4. In light of the above, the *Noticee* was called upon to show cause as to—

(i) why suitable directions, including the following, under sections 11B(1) and 11(4) read with section 11(1) of the SEBI Act, should not be issued against them:

a) to cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever;

b) not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, in any manner whatsoever whether directly or indirectly;

c) to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents,

communications etc., in digital mode or otherwise, in relation to its investment advisory activity or any other activity in the securities market;

d) to refund the amount of ₹ 7,53,94,971/- received from the clients/investors/complainant on or after April 1, 2018, as fees or consideration or in any other form in respect to the investment advisory activities; and

(ii) why suitable directions for imposing penalty under sections 11B(2) and 11(4A) read with sections 15HA and 15HB (for violations prior to March 8, 2019) and section 15EB (for violations subsequent to March 8, 2019) of SEBI Act read with regulation 35 of Intermediaries Regulations read with regulation 28 of IA Regulations and Penalty Rules should not be issued against the *Noticee* for the aforesaid violations.

SERVICE OF SCN AND REPLY OF THE NOTICEE:

5. I note that SCN in the said matter was delivered to the *Noticee* on his address / email available on record. The *Noticee* submitted his reply to the same vide letter dated June 22, 2022*, inter alia*, submitting as follows:–

W.r.t. allegation—"*Products meant for high risk bearing clients sold to medium risk bearing clients"*

5.1. I would like to draw SEBI's attention towards Welcome Note, which was being shared to every client while onboarding them wherein clients are made very well aware about the risks involved and clients used to revert on the said mail by agreeing onto them. Further, after the client onboarding procedure, some clients do approach and ask for high risk products, wherein they state that they are competent enough to bear the high-risk products and want to trade in such segments to earn high returns. However, as a prudent SEBI registered Investment Adviser, I do take their consent over e-mail for providing high risk services. I have in no manner forced any of my client to subscribe to a certain

service/ package. Client by themselves seek for such services and give their consent for the same.

5.2. Furthermore, none of these clients have filed complaint/ grievance related to this matter, which does prove the fact that they were not forced or deceived or mislead in any manner and also, they were fully satisfied with the services. Hence, I didn't violate the Regulators as clients were able to bear any investment related risks and didn't commit any fraudulent activity as I didn't conceal any facts from the clients.

5.3. Further, prior to the applicability of the SEBI Circular dated 23rd September, 2020, I had started obtaining client's consent over the risk profiling.

W.r.t. allegation—"*Unfair and unreasonable amount of fees charged from clients"*

5.4. Clients don't fill their correct income details or they don't feel safe to disclose their correct income due to personal/ taxation reasons. Further, clients were made aware that he/she needs to fill all the correct information, as filing the false information will lead to carrying out wrong risk profiling and the client will be held liable for the same.

5.5. Since clients are able to pay high fees which validates that client's annual income and their proposed investment amount is much higher than mentioned. The clients have paid fees with their own will and consent. They were neither forced nor were deceived in any manner whatsoever. Further, if client does not disclose correct details/ information in Risk Profile, then Investment Adviser shall not be held liable.

5.6. In many instances, clients do confirm over the telephone call that they have more annual income than which is stated in Risk Profile; however, if we get the client filled another revised Risk Profile then it will lead to multiple risk profiles, which will indeed violate the SEBI Regulations.

5.7. Furthermore, clients do increase their investment amount once they start earning profits. I would also like to state a matter of fact that no investor/ trader will ever pay higher amount of fee than their investment or their annual income.

5.8. No exorbitant fees were charged from clients, they were capable to pay high fees, then only they have paid, if they wouldn't be capable enough then they won't have paid such high fees.

5.9. Further, prior to 1st April, 2021 there was no limit or restrictions or cap on quantum of fees to be charged from the clients.

W.r.t. allegation—*"Noticee promised assured/guaranteed unrealistic returns to its clients"*

5.10. With regard to the email copies of Mr. Amit Kumar and Mr. Manish Vyas, I would like to request SEBI to check the said copies of email thoroughly, as one can easily identify that the said emails to the clients were not sent by the Striker Stock Research official email ids. The said emails were being sent to the clients by some unauthorized personal email id of an employee.

5.11. Further, on our Website, it is clearly mentioned that *"We do not provide any guaranteed returns".* Furthermore, in our Welcome Mail, which is sent to every client while onboarding him/her, this line is mentioned in legible font: "*Stock market has inherent market risk, hence we do not claim any profit guaranteed services". "Striker Stock Research Investment Adviser do not provide profit sharing services, guaranteed service and services which are not mentioned in our website, if any person tries to sell such type of product kindly call on customer care number.',*

5.12. Further, I do admit the fact that the proprietor has the liability of the conduct of its employees, hence, the mail sent by an unauthorized email id which contained assured returns was not legitimate and as a result I being a genuine Investment Adviser have refunded the clients the amount of service fee paid by them.

5.13. Furthermore, full refund of service amount was provided to Mr. Ratan Pandey, and the employee who was involved in this activity, was expelled with immediate effect.

5.14. In the Welcome Mail shared with the clients, this is also being mentioned: *"Striker Stock Research Investment Adviser uses only following email-id to*

communicate with its clients, which is as follows info@strikerstockresearch.com, We do not communicate to our clients except these mentioned email-ids, In case you receive any mail other than the abovementioned email-id please do inform us and don't consider such mails from Striker Stock Research Investment Adviser".

5.15. However, barring these couple of matters the same has not happened and even it happened without my knowledge and I took the corrective action as soon as it came to my knowledge. Further, I did act in the best interests of the client as soon as I got aware of the situation, and refunded him the full amount.

W.r.t. allegation—*"Failure to redress client's grievances"*

5.16. The transcript has been wrongly interpreted by SEBI since the client having some grievance before filing the complaint. If he was not satisfied with the services, then how one can continue to provide further services to him as his complaint resolution was under process.

5.17. A person who is already dissatisfied with the services, cannot seek further services as the same would make no sense. Hence, client was asked that if he is satisfied with our services and wants to continue his services then he can withdraw his complaint filed on the SCORES Portal. Further, client's complaint was resolved with proper satisfaction.

5.18. I have not violated Regulation 21 of the IA Regulations, as I have always resolved all my clients' grievances in a timely manner and provided the best resolution as possible. Further, I do also have an adequate procedure for client's grievance redressal mechanism.

W.r.t. allegation—"*Misrepresentation to clients"*

5.19. They were not my representatives and were not representing me in any way. I am the only person engaged in providing investment advisory services. They were just my employees engaged in lead generation. Hence, the term "representative" used here by the SEBI is totally incorrect.

5.20. I being the Investment Adviser was involved in assessing the risk profiling of the clients, conducting the research, and providing the recommendations. Further, all my requisite registration details as per the SEBI Circular are being mentioned on the website, clients are in no manner being misrepresented in any way.

5.21. Furthermore, the clients Mr. Manish Vyas, Mr. Piyush Patel and Mr. Raman Kumar were provided refund of their amount.

5.22. I have not misrepresented any of my clients, the said acts were done by an employee who was expelled with immediate effect as soon as I became aware that he has misrepresented with the client. I did take the corrective measure and further full amount was refunded to client. I being a prudent Investment Adviser, won't accept fees from clients wherein they are being misguided. As mentioned, for me client supremacy is the utmost priority. The said act has not been repeated thereafter.

W.r.t. allegation—"*Noticee handled client's demat account"*

5.23. SEBI has again misinterpreted the transcript. The employee was just assisting the client in resetting his demat account password as the client was unable to do it by his own. Further, in the end the employee meant that you just invest your money in demat account and if you will face any difficulties then I will guide you. The employee has never punched any trade on the client's behalf. Further, we were not involved in managing the funds or securities on behalf of the clients, rather we had just offered/ provided execution and implementation services to this client free of cost.

W.r.t. allegation—"*Noticee received fees from the clients before starting of its services"*

5.24. In all such cases, client's other service was running at that point of time, and starting another service simultaneously would not be in the best interest of the client as he would not have been able to take benefit of it. Further, there is nothing wrong in taking an advance payment for services as the client gets

discount if they opt for a service in advance. Further, such fees are charged after proper consent from the client.

5.25. The said practice is adopted by every service industry and it is absolutely fair and reasonable, there is nothing wrong in it.

5.26. It would have been unfair if the services were not provided to the clients when it was due. However, the services were delivered properly to the clients and clients were also agreed for the same.

5.27. Further, SEBI has come up with the Circular on 23rd September, 2020 regarding restrictions for advance payment for more than 2 quarters, prior to that there were no limitations for advance payment. The thing which SEBI itself has not mandated to follow earlier, then why they are stating that it is incorrect. Presently the same rule is being followed by us as we.do not take advance payment for more than 6 months service.

Other submissions

5.28. Just 3 complaints have been received against me in the past one year on the SEBI SCORES Portal which have been duly resolved timely.

5.29. I have refunded the service amount to the clients who were dissatisfied with our services and even to whom who have faced losses by following my recommendations. No one would ever refund the service amount to its clients if he has any fraudulent intentions. Hence, it does make clear that I was not having any fraudulent intentions and have not violated any provisions of PFUTP Regulations.

5.30. The total number of complaints received on SCORES Portal stands out to 103, out of which only 80 are unique complaints till date from the date of Registration i.e. in the span of 56 months wherein I have served thousands of clients, hence the proportion of dissatisfied clients is much lower than that of satisfied clients. It is a matter of fact that clients do file the complaint even if they suffer a small loss for which the Investment Advisers are not liable, but then too I have resolved all of my clients' grievances and have refunded to majority of them.

5.31. Further, I would also like to inform Hon'ble SEBI that parallel proceedings are being initiated against me. It is therefore prayed that Hon'ble SEBI may be pleased to not to take any action in this matter. This Hon'ble SEBI may be pleased to issue just a warning to me in respect of few non-compliances observed by me;

PROVISIONS OF LAW ALLEGED TO HAVE BEEN VIOLATED BY THE *NOTICEE:*

6. The relevant provisions of the IA Regulations, PFUTP Regulations and the SEBI Act allegedly violated by the *Noticee* are reproduced hereunder:

IA REGULATIONS:

Consideration of application and eligibility criteria.

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

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

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.

Risk profiling.

16. *Investment adviser shall ensure that,-*

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

(i) assessing a client's capacity for absorbing loss;

(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;

(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

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

(i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;

(ii) questionnaire is not structured in a way that it contains leading questions.

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;

(c) It understands the nature and risks of products or assets selected for clients;

(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.

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.

Client level segregation of advisory and distribution activities.

22. (1) An individual investment adviser shall not provide distribution services.

Liability for action in case of default.

28. An investment adviser who -

(a) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

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.

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.

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.

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;

PERSONAL HEARING AND ADDITIONAL QUERIES:

7. The *Noticee* was granted an opportunity of personal hearing on September 27, 2022 when his authorized representative appeared and made submissions on behalf of the *Noticee*. During the hearing, the authorized representative on behalf of the *Noticee* was asked to submit the *Noticee*'s response on the following queries:

   a) Data in respect of investor grievance redressal, irrespective of whether the complaints were received through SCORES or in physical form / e-mail.
   b) Details of NISM certifications held by the proprietor and his employees.
   c) Details of any fee collected from the clients who, as per *Noticee*'s admission, were misrepresented by the employees of the *Noticee*.
   d) Details of employees over a period of 5 years with a break-up of how many joined, how many left and how many were fired by the *Noticee*.
   e) Details of volume of transactions over past 5 years. What has been the annual fee and how many clients have been served by the *Noticee*.
   f) Provide details of the clients mentioned in the SCN as regards the actual investment done by them, and how the fee is computed by the *Noticee* based on such investments
   g) For all the clients provide the consent letter / form taken from them.
   h) Provide GST returns and invoices raised from the complainants mentioned in the SCN.

8. The *Noticee* submitted his response to the aforesaid queries vide email dated October 25, 2022. The following is relevant to be mentioned in relation to the response submitted by the *Noticee:*

8.1. As regards the fee collected from the clients, who admittedly were misrepresented by *Noticee's* employees, the following details were submitted:

Client name	**Amount received (₹)**
Manish vyas	1,21,000
Ratan pandey	49,713
Piyush patel	7,76,275
Raman Kumar	4,67,825

8.2. With regard to the details of employees, the *Noticee* furnished only partial details as it did not provide the date of joining and leaving of the employees and their contact details. The *Noticee* only provided the names of employees with left, fired, etc. mentioned against them.

8.3. As regards the volume over a period of 5 years and the number of clients, the *Noticee* submitted the following:

YEAR	**AMOUNT (₹)**	**NUMBER OF CLIENTS**
17-18	42,40,175	67
18-19	3,20,33,326	350
19-20	3,04,98,212	530
20-21	35,72,016	117
21-22	1,05,47,038	160
22-23	1,13,58,029	318
Total	***9,22,48,796***	

8.4. As regards the actual investment done by the 27 clients mentioned in the SCN and how the fee was computed for them, the Noticee did not provide any clear rationale and only provided *"intra-day limit of 10 to 20 times" of the "proposed investment"* as the basis for selling packages and levying fees from the clients for the same.

CONSIDERATION AND FINDINGS:

9. I have perused and carefully considered the allegations levelled against the *Noticee* in the SCN and his submissions in response thereto along with the annexures, and also the information /documents submitted by him in response to the queries put to

his authorized representative during the personal hearing held on September 27, 2022.

10. I shall now deal with the specific allegations levelled in the SCN and the response of the *Noticee* in that regard.

Products meant for High Risk Bearing Clients Sold to Medium Risk Bearing clients:

11. It has been alleged in the SCN that the *Noticee* had sold the products meant for High Risk Bearing Clients to Medium Risk Bearing clients. In response thereto, the *Noticee* submitted that a "Welcome Note" was being shared with every client while onboarding them whereby clients were made aware about the risks involved and the clients used to revert on the said mail by agreeing to them. The *Noticee* has further submitted that after onboarding, some clients approach and ask for high risk products, stating that they are competent enough to bear the high-risk products and want to trade in such segments to earn high returns. Further, the *Noticee* argued that it obtained their consent over e-mail for providing high risk services and they were not forced in any manner.

12. In this regard, I note that as per regulation 16 of the IA Regulations, identification of the risk appetite / tolerance of the client is essential before the IA renders any advice to the client. In terms of regulation 16(b), the IA is required to have a process for assessing appetite, which in turn entails, *inter alia*, assessing a client's capacity for absorbing loss and his willingness to accept the risk of loss of capital. Further, regulation 17(e) of the IA Regulations also requires the IA to ensure that *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.* Thus, risk profiling is a function not only of the willingness of the clients, but also of his capacity to absorb loss.

13. As submitted by the *Noticee*, he had a structured process in place to carry out the risk profiling of clients, which led to identification of the clients as medium risk bearing or high risk bearing. It is noted from the welcome note sent by the *Noticee* to clients that for ascertaining the risk profile of a client, the *Noticee inter alia* considered age, investment objective, horizon of investment, income details, existing investment / assets, risk appetite / tolerance and liability, browning details, etc. Accordingly, for the sake of argument, even if it is accepted that the clients expressed their willingness to opt for high risk products, the *Noticee* could not have modified their risk profile from *medium risk bearing* to *high risk bearing* unless the risk absorbing capacity of the clients had changed. Change in risk absorbing capacity could have been recorded with the support of documents evincing increased income and assets details of the clients, but the same was not done by the *Noticee* in the instant case. For the above reasons, I am unable to accept the submissions of the *Noticee* in this regard.

14. Further, in relation to the said allegation of selling of products meant for High Risk Bearing Clients to Medium Risk Bearing clients, I find it important to mention that the *Noticee*, while designing products for client based on their risk-bearing ability, was offering only 5 products to "Medium risk-bearing clients" as opposed to 23 products which were being offered to "High-risk bearing clients". The table below bring out the relevant particulars: -

Products for High Risk Bearers	**Products for Medium Risk Bearers**
1) Stock Option 2) Stock Option Premium 3) Golden Stock Option 4) Nifty (Future+Option) 5) Stock Future 6) Stock Future Premium 7) Positional Future 8) Golden Stock Future 9) MCX 10) MCX Premium	1) Stock Cash 2) Stock Cash Premium 3) BTST / STBT 4) Positional Cash 5) Golden Stock Cash

11) Golden MCX 12) MCX Positional 13) Bullion 14) Bullion Premium 15) Golden Bullion 16) Energy 17) Energy Premium 18) Golden Energy 19) Base Metal 20) Base Metal Premium 21) Golden Base Metal 22) NCDEX 23) NCDEX Premium	

15. This skewed categorization in itself is indicative of the strategy of the *Noticee* to lure all clients into subscribing for High-risk products regardless of their risk-bearing capacity or income. As brought out in the SCN, out of 26 sample clients, 17 sample clients were categorized under Medium Risk category and out of those 17 clients, *Noticee* sold high risk category products to 14 clients. The *Noticee* has not disputed the above fact and has instead laid emphasis on the fact that consent of all the clients was taken while selling these high-risk products to the clients. In this context, it is pertinent to reiterate that risk profiling is a function not only of the willingness of the clients, but also of their capacity to absorb loss. Therefore, selling of high-risk products to medium risk-bearing clients without there being any upward change in the financial status of the clients can only be attributed to fee maximization on part of the *Noticee* and cannot be said to be in line with the investment advisory as envisaged udder the IA Regulations.

Unfair and unreasonable Amount of Fees Charged from Clients:

16. It has been alleged in the SCN that the *Noticee* charged unreasonable fee from the clients which in many cases exceeded the annual income and the proposed income of the client recorded in his risk profiling form. In response thereto, the *Noticee* has submitted that clients do not fill their correct income details as they do not feel safe to disclose their correct income due to personal/ taxation reasons. The *Noticee* has

further argued that the clients were made aware that he/she needs to fill all the correct information, as filing false information will lead to carrying out wrong risk profiling and the client will be held liable for the same. The *Noticee* has also argued that when clients are able to pay high fees, it validates that clients' annual income and proposed investment amount is much higher than mentioned. In this context, it is relevant to highlight that SEBI's examination had revealed that out of the 26 sample clients, fees received from 17 clients was more than their annual income disclosed in their respective RPF. Further, out of the said 26 sample clients, it was also observed that for 20 clients, *Noticee* charged fees in excess of their proposed investment disclosed in their respective RPF. The tables below contain the relevant details collated from the client master provided by the *Noticee*, RPF, etc.—

DETAILS OF CLIENTS WHERE FEE CHARGED IS MORE THAN THE ANNUAL INCOME OF THE CLIENT AND THE PROPOSED INVESTMENT

S. No.	**Name of client**	**Fees received from clients by *Striker Stock Research* as provided in client master (₹)**	**Period for which fees received**	**Annual income as per RPF / KYC (₹)**	**Proposed investment by client as per RPF provided by *Striker Stock Research* (₹)**
1	Rahul Desai	9,22,555	08 October 2018 to 15 February 2020	2-5 lakh	below 1 lakh
2	Mahendrakumar Vrajlal Soni	7,96,777	07 March 2019 to 15 May 2020	below 2 lakh	below 1 lakh
3	Nithyanandam Vivekanand	8,12,135	21 March 2019 to 29 August 2020	2-5 lakh	below 1 lakh
4	Amit	5,58,111	18 September 2018 to 18 December 2019	2-5 lakh	below 1 lakh
5	Nigade Mayur Suresh	5,37,000	06 November 2018 to 10 October 2019	less than one lakh as per KYC	1-2 lakh
6	Chetan Namdeo Pagare	5,34,715	25 August 2018 to 20 March 2020	2-5 lakh	1-2 lakh

7	Prasana Shrinivasrao Deshpande	5,18,500	22 October 2018 to 31 December 2019	2-5 lakh	below 1 lakh
8	ALY. Subrahmanyam	5,12,911	16 February 2019 to 30 January 2020	2-5 lakh	below 1 lakh
9	Raman Kumar	4,67,825	15 February 2019 to 02 October 2019	2-5 lakh	2-5 lakh
10	Rakesh Kumar	4,66,350	12 March 2019 to 29 May 2020	2-5 lakh	below 1 lakh
11	Piyush Vallabhbhai Dadhaniya	7,76,275	12 March 2019 to 18 Novemebr 2019	less than one lakh as per KYC	1-2 lakh
12	Ashish Siddharth Kamble	4,41,900	08 April 2019 to 28 Novemebr 2019	2-5 lakh	below 1 lakh
13	Rajeev Shekhar	4,35,674	18 June 2019 to 25 June 2020	less than one lakh as per KYC	2-5 lakh
14	Atulkumar Ramanlal Jani	4,08,550	12 August 2019 to 24 June 2020	2-5 lakh	below 1 lakh
15	Dharmveer Sisodia	3,98,690	05 June 2018 to 20 June 2019	less than one lakh as per KYC	—
16	Chetan Suresh Chaudhari	3,90,356	16 June 2018 to 31 October 2019	less than one lakh as per KYC	2-5 lakh
17	Raj Kumar	3,57,000	26 March 2019 to 20 November 2019	2-5 lakh	1-2 lakh

DETAILS OF CLIENTS (INCLUDING THOSE MENTIONED IN THE TABLE ABOVE) WHERE FEE CHARGED IS MORE THAN THE PROPOSED INVESTMENT

S. No.	**Name of client**	**Fees received from client (₹)**	**Proposed investment by client as per RPF provided by *Striker Stock Research* (₹)**
1	Rahul Desai	9,22,555	below 1 lakh
2	Mahendrakumar Vrajlal Soni	7,96,777	below 1 lakh

3	Gaurav	7,15,300	2-5 lakh
4	Balwant Singh	6,87,750	1-2 lakh
5	Nithyanandam Vivekanand	8,12,135	below 1 lakh
6	Amit	5,58,111	below 1 lakh
7	Bhimrao Nilkanth Pawar	5,44,167	1-2 lakh
8	Nigade Mayur Suresh	5,37,000	1-2 lakh
9	Chetan Namdeo Pagare	5,34,715	1-2 lakh
10	Prasana Shrinivasrao Deshpande	5,18,500	below 1 lakh
11	ALY. Subrahmanyam	5,12,911	below 1 lakh
12	Raman Kumar	4,67,825	2-5 lakh
13	Rakesh Kumar	4,66,350	below 1 lakh
14	Piyush Vallabhbhai Dadhaniya	7,76,275	1-2 lakh
15	Ashish Siddharth Kamble	4,41,900	below 1 lakh
16	Rajeev Shekhar	4,35,674	2-5 lakh
17	Atulkumar Ramanlal Jani	4,08,550	below 1 lakh
18	Chetan Suresh Chaudhari	3,90,356	2-5 lakh
19	Raj Kumar	3,57,000	1-2 lakh
20	Manish Vyas	1,21,000	below 1 lakh

17. In this regard, as noted earlier, risk profile of a client is also a function of his capacity to absorb loss which can be determined by his income details and proposed investment. While the client fills the income details in the form provided by the IA, it becomes the duty of a prudent IA to verify the same with supporting documents such as Income Tax returns, bank statements, etc. Risk profiling process as envisaged under regulation 16 of the IA Regulations cannot be said to be complete unless the IA verifies the details filled in by the clients. The entire purpose of risk profiling and suitability of products to the clients as detailed in regulations 16 and 17 of the IA Regulations will be lost if the IA seeks to shift the responsibility to the clients without carrying out any exercise of verification at his end.

18. The submission of the *Noticee* that the clients do not submit their correct income details for taxation purposes lacks merit since the information filled in the risk profiling form with an IA has no connection whatsoever with the income tax / other taxes to be paid by an individual.

19. Referring to the submission made by the *Noticee* that the client itself wanted to invest more than the annual income or the proposed investment, the kosher action on part of the *Noticee* would have been to record the revised risk profiling form of the clients based on their increased income / additional income and the revised investment proposal. In this connection, the *Noticee* has contended that if I get the client to fill another revised Risk Profile then it will lead to multiple risk profiles, which will indeed violate the SEBI Regulations. This understanding of the *Noticee* in my view is incorrect since filling a revised risk profile by a client would replace his old risk profile (similar to Know Your Customer 'KYC' updation) and therefore there will be no question of multiple profiles and violation of IA Regulations on account of the same.

20. In this context, the *Noticee* has also submitted that prior to 2021, there was no limit or restriction or cap on quantum of fees to be charged from the clients. In this regard, I note that the Code of Conduct for IA under the IA Regulations, even prior to the amendment, had the requirement that *the investment adviser shall ensure that fees charged to the clients is fair and reasonable.* With regard to "reasonableness" of the fee charged, I note that the IA Regulations always provided for principle based determination of fee to be charged by the investment adviser. What is reasonable in a particular circumstance may be the outcome of various factors which are relevant for such determination. As discussed earlier, when the *Noticee* charged fee which was much more than the annual income of the client and in several multiples of the proposed investment of the clients, such charging of fee cannot in any manner be viewed as fair and reasonable. In view of the above, I am unable to agree with the submissions of the *Noticee* in this regard.

<u>*Noticee* promised assured/guaranteed unrealistic returns to its clients:</u>

21. To discuss the allegation in context, I find it relevant to mention the contents of the emails and telephonic conversations between the clients and the executives of the *Noticee* (noted in English or Hindi written in Latin script).

i. Excerpt of e-mail sent to complainant—Mr. Amit Kumar

Date of email	Content of email
28-09-2018	*"As per telephonic conversation with our executive we are send our service proposal for holding plan, we are planning for holding the using amount will be 85000 and we will get the profit 210000 till 15 to 20 October 2018"*

Summary: Vide the above email the *Noticee*'s executive assured returns by mentioning assured profit (*profit of ₹ 2,10,000 on an investment of ₹85,000)* with specified duration of 15-20 days

ii. Excerpt of e-mail sent to complainant—Mr. Manish Vyas

Date of email	Content of email
06-07-2019	*Dear Sir,* *We are happy that you joined our services Your current service plan is customized services. The price of your Service is INR 1 Lac (Excluding GST). Your Total service amount Is INR 1,18,000 (Including GST) Previously you have paid INR 88,000 for the services. The Remaining amount Is INR 30,000. According to the The conversation of You and Your executive (Rajveer)* ***you will get the profit Upto 3.5 lac****. Until the commitment of your executive Is not Fulfilled You don't have to pay any additional amount.* *Service Charges : 1,00,000 (Excluding GST)* *Charges Paid : 88,000* *Remaining Charges : 30,000* *Executive Name : Rajveer* *Researcher Name : Vishwas Sharma* *Research And Branch Head : Kunal Verma (Contact No : 9993839806)* *Striker Stock Research* *INA000008516*

iii. Excerpts of telephonic conversation between *Noticee*'s executive and complainant—Mr. Manish Vyas

Recording	Duration	Details communicated
Call-1	15:30 to 16:23	***Client:*** *Abhi jaisa mera remaining amount hai jo payment ke liye aap bol rahe ho, after that vo jo hai recovery jo aapne 3,50,000 ka commitment kiya hai, vo mujhe kahi na kahi written me mil sakta hai kya, aap muje mail me ya kahi pe written me de sakte hai kya?* ***Executive:*** *Bilkul de dunga sir, mai bilkul de dunga. Agar mai itna confidence ke saath itna bol raha hoon to usko mai written me bhi de dunga. Koi issue nahi hai.* ***Client:*** *ye mai payment karne ke baad mujhe kitne din ke andar profit milna shuru ho jaayega.* ***Executive:*** *Sir, ye payment aap agar aaj karenge na to ye abhi activate ho jaayega aur abhi second half me market me 1:30 ke baad sure shot call hogi to mai aaj bhi provide kar dunga aur usme ₹ 10,000 se 12,000 ka return aajayega otherwise aapka working kal se start ho jayega.*

Summary: The executive of the *Noticee* assured profit of ₹ 3,50,000 through telephonic conversation and the same commitment was given by the *Noticee* through their email dated July 6, 2019.

iv. Excerpts of telephonic conversation between *Noticee*'s executive and complainant— Mr. Ratan Pandey

Recording	Duration	Details communicated
Call-1	02:17 to 02:36	***Executive:*** *volume basis call me investment ki security ke saath zero % risk ke saath kaam hota hai jaha par aapka lagaya gaya capital bhi secure hota hai aur us par aap sure guaranteed return market se nikalte ho. Jisme minimum 35 minutes ke andar andar market se profit book karte hai.*
	06:00 to 06:15	***Executive:*** *aapko guaranteed return ke liye kaam aapka hota hai. Isme jo aapka working rahega usme committed*

		return ke base par kaam hoga, zero % risk rahega aur bit ke saatha isme aapka kaam rahega
	07:24 to 07:45	***Executive:*** *Isme aap maan lijiye committed base profit raha ₹ 5,50,000 something ka us behalf pe aapka around ₹ 1,00,000 se ₹ 1,50,000 ka service amount rehti hai jo aapko after getting the return pay karni rehti hai. Yaani guaranteed profit ₹ 5,50,000 ka rahega aur uske behalf par ₹ 1,00,000 se ₹ 1,50,000 ka fees rahega.*
	11:05 to 11:20	***Executive:*** *24 calls par aapka kaam hoga poore month me. Aur 24 calls par aapka return rahega approximate 5.75 lakh ka benefit isme rahega. Jo ki committed base profit.*
	11:30 to 12:20	***Executive:*** *maan lijiye ₹ 50,000 se aapne start kiye aura age ₹ 1,00,000 ka kar liya. Compound return ke basis pe kaam hoga aaj aap ₹ 50,000 lagakar ₹ 8,000 kama rahe ho to next day kaam aapka ₹ 58,000 se hoga use aap kam se kam 9-10 hazar kamaoge. Yaani aage kaam karne ke liye paise kitne hogaye ₹ 65,000 to 70,000 isme agar aapne Rs 50,000 aur add kar diya to hogaya ₹ 1,30,000 ab ₹ 1,30,000 se kaam karna shuru karoge to return aapka kam se kam ₹ 12,000 se 15,000 rahega. Aur din ki 2 call milegi iska matlab ₹ 25,000 se 30,000 per day profit rahega intra day aapka.*

Summary: Executive was providing assurance of committed profit of ₹ 5,50,000 and the service charges for the same shall be of ₹ 1,00,000 to ₹ 1,50,000.

22. In relation to the allegation of promising assured / guaranteed returns, the *Noticee* drawing specific reference to the *email copies of Mr. Amit Kumar and Mr. Manish Vyas* (mentioned in the SCN), has submitted that the said emails to the clients were not sent from the official email IDs of the *Noticee*, and rather, were being sent from some unauthorized personal email id of an employee. The *Noticee* has further submitted that on his Website, it is clearly mentioned that *"We do not provide any guaranteed returns".* Further, in his Welcome Mail, sent to every client while onboarding, this line is mentioned in legible font: *"… Striker Stock Research Investment Adviser do not provide any profit sharing services, guaranteed service*

and services which are not mentioned in our website, if any person tries to sell such type of product kindly call on customer care number"; *"Striker Stock Research Investment Adviser uses only following email-id to communicate with its clients, which is as follows info@strikerstockresearch.com, … In case you receive any mail other than the abovementioned email-id please do inform us and don't consider such mails from Striker Stock Research Investment Adviser".* The *Noticee* has also contended that the proprietor does not have the liability of the conduct of his employees, and hence, the mail sent from an unauthorized email id, which contained assured returns was not legitimate. Further, the *Noticee* has refunded the clients the amount of service fee paid by them. In relation to the complaint of Mr. Ratan Pandey (mentioned in the SCN), the *Noticee* stated that the employee who was involved in this activity, was expelled with immediate effect.

23. In relation to the above submissions of the *Noticee* on the allegation of promising assured returns, I find it relevant to note that the *Noticee* has not disputed the fact that the complainants namely, Amit Kumar, Manish Vyas and Ratan Pandey were his clients and that they had made payments to the *Noticee* towards subscription of his services. It is an undisputed fact that the said clients had made the payments to the *Noticee's bank account(s)* and not to any other bank account(s) regardless of the email / telephonic communications noted above and brought out in the SCN. The *Noticee* has also not denied that the employees who had sent the mails to the complainants were his employees.

24. It does not appeal to reason that an employee of the *Noticee*, who wished to misuse the *Noticee*'s brand name and used fake email IDs to promise assured returns to clients, would ask the clients to make payments to the accounts of the *Noticee* and not to any third party accounts. The *Noticee* has not disputed the fact that the complainants named above had made the payments to his bank accounts. This is also corroborated from the *Noticee*'s submission that he had refunded the amounts received from the clients. Further, the *Noticee* has also not denied the fact that the mails were sent by his employees which is exhibited from his submission that as a

corrective action he had removed the employees who were responsible for the conduct discussed above. The fact that the *Noticee* was the beneficiary of all the payments received from the complainants (being influenced by the assurances made by the *Noticee*'s employees through so-called fake email IDs) is indicative of a well-designed strategy of the *Noticee* to lure clients by making false assurances using look alike e-mail IDs such as strikerstockresearch65@gmail.com, strikerstock@gmail.com, etc., which is clearly evident from the fact that all the clients who fell prey to such assurances made payments to the *Noticee* only and not to anyone else.

25. The *Noticee* has also submitted that he should not be held responsible for the misconduct of his employees, in particular, use of fake email IDs to make false assurances to clients. In this regard, I note that it is not the claim of the *Noticee* that the persons who sent the e-mails (recorded in the SCN) were not his employees. It is a settled law that an employer being the "principal" of the employee (i.e. the "agent") is vicariously liable for all acts of his employee which are done within the scope of his work. Looking at the facts of the present case, the employees sent the email / indulged in telephonic conversation with the clients on behalf of the *Noticee,* the clients subscribed to the services offered by the *Noticee* and the payment was also received in the bank accounts of the *Noticee*. These facts clearly evidence that the employees were acting as per the scope of work assigned to them by the *Noticee* and not without *Noticee's* knowledge, which could have been the case, had the payments been received by the employees in some bank account other than that of the *Noticee*. In light of these facts, the *Noticee* cannot shrug off the responsibility, which the law entrusts on to him being the employer / principal for the acts of his employees / agents.

Failure to redress client's grievances:

26. It has been alleged in the SCN (drawing reference to a complaint filed by one Mr. Shakeel Ahmed) that instead of resolving the complaint, the *Noticee* stopped providing services to client and forced him to withdraw the complaint from SCORES.

The conversation exchanged between the complainant and the *Noticee*'s representative as recorded in the SCN is as under:

Recording	Duration	Details communicated
Call-1	00:00 to 00:19	***Client:*** *aapne Friday ke din bataye they ki call denge karke bole they.* ***Executive:*** *aap complaint waapis lenge to hi mai call de paungi otherwise mai call nahi de paungi sir aapko. Clear bol rahi hoon thik hai. Complaint aap waapis le lijiye call mil jayegi aapko koi dikkat nahi hai.*

27. In response to the above allegation, the *Noticee* has submitted that *the transcript has been wrongly interpreted by SEBI since a person who is already dissatisfied with the services, cannot seek further services as the same would make no sense, and therefore the client was asked that if he is satisfied with our services and wants to continue his services then he can withdraw his complaint filed on the SCORES Portal.* In this regard, I note that the Noticee has not disputed the contents of the conversation as recorded in the SCN.

28. On a perusal of the said text (in Hindi noted in Latin script), the tenor of the words appear to be pushing the client to withdraw his complaint filed on SCORES by making the further provision of services contingent to withdrawal of complaint. Going by the understanding of the nature of the services being offered by the *Noticee*, the client subscribes to a service for a definite period of time, and the continuation of that service for the entire period is the commitment of the *Noticee*. Thus, if the client was dissatisfied with one product or the tips provided on one day of the aforesaid definite period, then the IA is still obliged to provide the services during the remainder duration of the validity of the subscription taken by the client. The conduct of the *Noticee* in forcing the complainant to withdraw the complaint, exhibited that the *Noticee* had no intention of resolving the complaint and wanted to close it showing as 'withdrawn'. Thus, I am unable to accept the submission that SEBI has misinterpreted the transcript of the conversation.

Misrepresentation to clients:

29. It has been alleged in the SCN that the *Noticee*'s representatives had misrepresented the clients by giving them false information, *inter alia*, about the name of the owner, composition of the management of Striker Stock Research, trading being done in dollars, conversion of dollars to Indian Rupees, demat account being a dabba account, etc. The following extracts of communications exchanged between the *Noticee*'s representatives and the client bring out the nature of misrepresentation.

29.1. **Extracts of Telephonic conversation between *Noticee*'s executive and Complainant named Mr. Manish Vyas:**

Recording	Duration	Details communicated
Call-2	*03:40 to 04:15*	*Client: aapne agar owner ko nahi mile to iska matlab ye to nahi hai na ki aap owner ko nahi jaanate.* *Executive: Naam pata hai na sir, Aaryan naam hai unka.* *Client: Kya naam hai?* *Executive: Aaryan naam hai unka. Humare company ka jo owner hai unka naam Aaryan hai. Vo yaha par rehte nahi hai isiliye mai aajtak unse nahi mila hoon.*

Summary: The executive of the *Noticee* provided wrong information to the client by telling that the owner of Striker Stock Research is a person named Aaryan, whereas, the *Noticee* Mukesh Vishvakarma is the sole proprietor of Striker Stock Research.

29.2. **Extracts of Telephonic conversation between *Noticee*'s executive and Complainant named Mr. Piyush Patel :**

Recording	Duration	Details communicated
Call-1	*00:00 to 00:10*	*Executive: Aapko Board of Directors ka assistant ka number mil jayega aap unse directly contact kar sakte hain is baar.*

	05:00 to 05:20	*Executive: Ha Piyush Ji discussion ho gaya aapka? Ye aapke satisfaction ke liye maine approval liya tha. Baaki Board of Directors se kisika conversation hota nahi hai.*

Summary: The executive of Striker Stock Research provided wrong information to client by telling that there are Board of Directors of Striker Stock Research, whereas Striker Stock Research is a proprietary firm and the Proprietor is Mukesh Vishvakarma.

29.3. **Extracts of Telephonic conversation between *Noticee*'s executive and Complainant named Mr. Raman Kumar**

Recording	Duration	Details communicated
Call-1	*01:23 to 02:00*	*Executive: Humara jo Demat hota hai vo dabba demat hota hai jisme phir dollars me trading hoti hai. Indian currency me trade nahi hota hai. Dollars me trading hoti hai isiliye is amount ko convert karana padta hai Indian currency me is amount ko vaapis aapke account me transfer karne ke liye aur is account ka naam hota hai escrow account jo freezed account uska poora naam hai. Escrow freeze account se amount transfer kiya jata hai taaki aapka amount dollar se convert hoke aapke account ko transfer ho sake. Kyunki aap domestic investor hai hum aapke account me dollar me paisa transfer nahi kar sakte.*
	06:00 to 06:40	*Client: Sir mere paas iska koi message nahi aayega ya phir ye sab phone call par hi hoga.? Executive: Sir ye dabba offline working hota hai iska message nahi aata hai. Sir ek hota hai online trading jisme aap khud order daalte ho dusra hota hai offline trading jisme aap broker ko bolte ho phone kar ke aur tisra hota hai dabba trading isme demat account nahi hota hai saara likaha padi jo trade hota hai vo register pe hoti hai. Yaha par broker humare jo hai vo register par entry mention karte hai*

		kyunki yaha par heavy limit par working hoti hai.
Call-2	*01:05 to 02:00*	*Client: sir ye jo profit hai mera freze account me dal raha hai sir?* *Executive: Arrey profit abhi dal nahi raha hai 15 din to wait kijiye. 15 days pe payout hota hai. Aapko bataya hai na Mr. Raman sir maine.* *Client: Ji sir bilkul.* *Executive: 15 din ho gaye kya abhi trading karte hue?* *Client: Sir aap keh rahe they na mere freze account me aayenge?* *Executive: Profit aaya hai par jitana bhi banega ikhatta milega. Aur uska naam hai escrow account aur payout ki file banegi tab transfer hoga na. Yaha pe saare clients ka ek saath banta hai. Aapka paisa kitna bana hai saare clients ka 15 din ka hisaab kitaab banane ke baad payout file banta hai. Phir vo amount escrow account me transfer hota hai phir vo aapke saving account me jata hai.*
	03:40 to 04:40	*Executive: isme ek security code generate kar rahe hain taaki next position se kisi bhi tarah ke market me position leak naa ho. Security code ka payment customer ko karna padega aur vo jo loss hua hai vo hum bear karenge. Ye security code ka amount pay karna padega aapko. Aapka profit ban chukka hai aap ye amount pay kar dijiye security code ka phatafat mai aapko iska 50% ka discount bhi de raha hoon. Ye discount sirf naye clients ke liye hai. 31340 clients new bane hai is month me jinko hum ye benefit de rahe hai. Sir fayada ye hoga security code generate karne se aapka paisa jo safe hai jo ₹1,75,000 ka profit aaya hai vo aapke escrow accout me 15 days baad transfer ho jaayega.*

	05:15 to 06:26	*Client: Sir profit to book hojayega par mere paas itna amount nahi hai.* *Executive: Sir meri baat aap samajhiye ₹ 5,11,000 ka profit book karenge position par. Aap dekh sakte hai Venkeys India stock par.* *Client: Sir mai dekh sakta hoon par itne paise arrange nahi ho paayenge mere paas mai to 10-20-30 hazar arrange kar sakta hoon at present bas itna hi.* *Executive: Aap ek kaam kare fatafat 25% transfer kar de mai board members se baat karta hoon. Jo hai jaldi batao ₹ 5,11,000 ka profit ka sawal hai.* *Client: Sir mai gaav me hoon abhi jaata hoon jaldi se jaldi karwata hoon. Mere gaav se 8 kms par hai.* *Executive: 20 minutes me aap ₹ 44,500 kar denge nahi kar payenge to bata dijine mujhe dusre customer se baat karni hai.* *Client: sir aap thoda time diya kara karo sir amount ke liye mere paas amount nahi hota sir.* *Executive: Aapko mai clearly bata chukka hoon abhi aap 30 minutes me aap ₹44,500 kar sakte hai ya nahi kar sakte hai transfer kara rahe hai ya nahi kara rahe hai nahi to ₹ 5,11,000 ka profit haat se nikal jayega.*

Summary: From the conversation, it was noticed that the representatives of IA assured profits and pushed the client hard to arrange funds for earning such profits and provided, *inter-alia*, following misinformation to its clients:

- trading was done in US Dollars and conversion is required into Indian currency;
- profit is credited into escrow account and then transferred to the client's savings account;
- demat is dabba demat;
- a security code is generated and client has to pay the amount generated through the security code.

29.4. As recorded in the SCN from the 8 calls recordings submitted by Mr. Raman Kumar, it was observed that client was lured to pay ₹ 4,67,825 (As per client master and invoices provided by *Striker Stock Research*) by promising more and more returns from the market. The *Noticee* charged client various types of fees like file settlement fees, currency convertible fees, security code generation charges, etc. It was also noted from the conversation that *Noticee* kept charging amount from client in the name of investment and fees and client kept paying to the *Noticee* thinking that the *Noticee* is doing investment on his behalf but the *Noticee* under the garb of providing investment advice received a total of ₹ 4,67,825.

30. Regarding the misrepresentation made by the employees of the *Noticee*, the authorised representative during the personal hearing admitted the allegation and further stated that the concerned employees who had misrepresented were expelled by the *Noticee*. It was also submitted on behalf of the *Noticee* that the amount taken from these clients was refunded. In this regard, I find that the above submission of the *Noticee* appears to be an attempt on part of the *Noticee* to de-link himself from the employees who were acting at his behest. The very fact that the money received from the clients who were misrepresented was received in the bank account(s) of the *Noticee* and not in the bank account of the employees (who misrepresented) or any other account, leads to the conclusion that the said employees were acting as per the instructions of the *Noticee* to somehow lure the clients into purchasing the products / services of the *Noticee*. The submission regarding refund of money to the clients and expulsion of the employees appears to be a mere afterthought aimed at showing some corrective action.

<u>*Noticee* handled client's demat account</u>

31. It has been alleged in the SCN on the basis of complaint of one Mr. Krishna Madhaw that that *Noticee*'s executive was asking for reset of client password which had expired and also asked the client to deposit money in his demat account and rest

of the things would be taken care of by Striker Stock Research. Extracts of call recordings are as under:

Recording	Duration	Details communicated
Call-1	00:00 to 00:55	***Executive:*** *mai ye bol rahi hoon ki muje password reset karke do na aap. Aapka password block ho gaya hai.* ***Client:*** *Kya karna padega?* ***Executive:*** *Reset karna padega, forgot password karna padega. Aata hai ki nahi aapko, aata hai ki nahi aata hai.* ***Client:*** *kabhi kiya nahi, kar lenge.* ***Executive:*** *nahi kiya hai na to aap ek kaam karo muje OTP bata do jo abhi aayi hai vo.* ***Client:*** *4268* ***Executive:*** *thik hai mai naya password bana rahi hoon. Neha@123*
Call-2	01:46 to 00:55	***Executive:*** *aap bas apne demat me paisa rakho baaki kya karna hai kaisa karna hai mai dekh loongi mere hisaab se.*

32. In this regard, the *Noticee* has submitted that SEBI has misinterpreted the transcript as the employee was just assisting the client in resetting his demat account password, which the client was unable to do on his own. Further, in the end the employee meant that "*you just invest your money in demat account and if you will face any difficulties then I will guide you*". The *Noticee* also submitted that the employee has never punched any trade on the client's behalf and Striker Stock Research was not involved in managing the funds or securities on behalf of the clients, rather it just offered/ provided execution and implementation services to this client free of cost.

33. With regard to the allegation of handling of client's demat account, it is noted that the *Noticee* has not disputed the contents of the call record transcript noted above. One fact which emerges clearly from the above conversation is that the executive of the *Noticee* asked for OTP from the client for resetting client's password and that she was resetting the password at her end. This act in itself is in derogation of the most basic ethic of financial conduct that one should not ask for confidential

information like OTP from the other and should not operate the other person's account. *Noticee* has also put forth that no order was punched by the employee for the said client. While the SCN does not bring any detail as to punching of trade by the *Noticee* / his executives, the conduct of the *Noticee* in seeking the OTP and operating the client's account to reset the password, cannot be treated as acceptable on part of a SEBI registered IA. The acceptable way of providing the assistance claimed to have been provided by the *Noticee*, would have been to guide the client step-by-step and not to do the same at his behest. I am therefore unable to agree with the submissions of the *Noticee* in this regard.

***Noticee* received fees from clients before starting of its services**

34. It has also been alleged in the SCN that the *Noticee* had taken the fees from the client much before the start of the service for which the client had subscribed. The table below highlights the same:

S. No.	Name of client	Date of invoice	Date of start of service	No. of days difference	Amount of fees received (₹)
1	ALY Subramanyam	28/06/2019	26/09/2019	90	25,500
		04/07/2019	01/11/2019	120	33,600
		06/07/2019	21/10/2019	107	11,800
2	Ashish Sidharth Kamble	23/07/2019	05/10/2019	74	11,700
		26/07/2019	18/11/2019	115	13,800
		08/08/2019	01/01/2020	146	15,000
		23/10/2019	01/04/2020	161	65,000
3	Atul Kumar	07/11/2019	21/01/2020	78	20,500
4	Balwant Singh	27/10/2018	01/03/2019	125	49,000
		29/10/2018	02/03/2019	124	70,000
5	Gaurav	30/07/2019	26/10/2019	88	50,000
6	Mayur Nigade	15/11/2018	31/01/2019	77	3,000
7	Nityanandam Vivekanand	20/07/2019	01/12/2019	134	50,000
		30/07/2019	01/12/2019	124	2,01,500
		26/08/2019	13/11/2019	79	20,000
		18/09/2019	21/01/2020	125	10,000
		04/10/2019	18/02/2020	137	5,000
8	Piyush Vallabhbhai Dadhaniya	28/03/2019	23/07/2019	117	5,000
		28/03/2019	13/06/2019	77	15,000
		30/03/2019	30/05/2019	61	2,35,000

		30/03/2019	01/07/2019	93	77,500
9	Prasana Shrinivasrao Deshpande	10/12/2018	15/10/2019	309	15,000
		10/12/2018	15/10/2019	309	10,000
10	Rahul Desai	04/03/2019	18/05/2019	75	50,000
11	Raman Kumar	12/03/2019	06/06/2019	86	30,000
		13/03/2019	03/06/2019	82	56,250
		13/03/2019	19/06/2019	98	4,000

35. As recorded in the SCN, the difference between receipt of payment and start of service ranged from 61 days to 309 days. Out of 26 sample clients in case of 11 clients, the *Noticee* charged fees much prior to start of its services, with the amount of advance fees ranging from ₹ 3,000 to ₹ 3,32,500 per client.

36. In this regard, the *Noticee* submitted that in all such cases client's other service was running at that point of time, and starting another service simultaneously would not be in the best interest of the clients as he would not have been able to take benefit of it. Further, there is nothing wrong in taking an advance payment for services as the client gets discount if they opt for a service in advance and such fees are charged after proper consent from the client. *Noticee* also submitted that regarding restrictions for advance payment for more than 2 quarters, SEBI came out with the Circular only on 23rd September, 2020 and prior to that there were no limitations for advance payment.

37. In this regard, I note that admittedly, the *Noticee* had taken payments from clients for services while other services (already subscribed by the clients) were running. During the hearing, the authorized representative was asked to explain how the *Noticee* used to track the performance of the service provided to a particular client. In response thereto, the authorized representative submitted that the *Noticee* does not track whether the client was acting upon the advice / tips being provided by the *Noticee*. Thus, it emerges that the *Noticee* was only focussed on selling its services / products to its clients without any regard to the suitability of the products to the clients. The fact that clients were sold services well in advance while another service was running exemplifies the strategy of the *Noticee*. Such conduct of the *Noticee*

shows that his sole objective was to charge/extract more and more fees from the clients without showing any concern to how the product / service fared for the client. While the provision for taking advance fee from the clients (not exceeding 2 quarters) with the consent of the client was specified vide the Circular dated September 23, 2020, the conduct of the *Noticee* (highlighted in the table above) in taking fee from clients (without specific consent from them), up to 309 days in advance, while they had other services running, ill-behooves an investment adviser registered with SEBI.

38. To summarise the conduct of the *Noticee* discussed in the preceding paragraphs, I note the following:

38.1. *Noticee* sold high-risk products to medium risk-bearing clients without there being any upward change in the financial status of the clients with the objective of fee maximization.

38.2. *Noticee* charged unreasonable fee from the clients which in many cases exceeded the annual income and the proposed income of the client recorded in his risk profiling form with the sole objective of profit maximisation.

38.3. *Noticee* made false assurances / profit commitments using look-alike e-mail IDs such as strikerstockresearch65@gmail.com, strikerstock@gmail.com, etc. and also using telephonic conversations to lure clients to subscribe to his products.

38.4. *Noticee* misrepresented the clients (by giving them incorrect information about the ownership, legal status / constitution of the Striker Stock Research, trading process, etc.) to somehow entice the clients into purchasing the products / services of the *Noticee*.

38.5. With regard to an investor complaint, the *Noticee* forced the complainant to withdraw the complaint and made further provision of services contingent to such withdrawal of complaint.

38.6. *Noticee* failed to follow basic ethics of financial conduct by asking for confidential information such as OTP from the client and resetting his password at *Noticee's* end.

38.7. *Noticee* sold services/products well in advance while another service was running to charge/extract more and more fees from the clients without showing any concern to how the product / service fared for the client.

39. It is noted that as per regulation 2(m) of the IA Regulations "*investment adviser*" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called. The term "*investment advice*" has been defined under regulation 2(l) as advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning. On a perusal of these definitions, it becomes clear that the role of an "investment adviser" envisaged under the Regulations is that of a person rendering advice relating to investing, buying, selling or dealing in securities or investment products and advice relating to investment portfolio containing securities / investment products. In my view, looking at the scheme of IA Regulations, the role of an investment adviser is to provide honest and fair advice to its clients considering their financial situation, investment experience, investment goals, etc. The investment adviser should also make adequate disclosures of the relevant material information to its clients and should charge fair and reasonable fee from its clients. I find that the *Noticee*, being a registered IA was under an obligation to provide the investment advice, suitable to every client. However, as discussed the Noticee sold products meant for high risk bearing clients to clients who did not have such risk appetite as the same would yield more fee to the *Noticee.* The *Noticee* also made reckless representation to its clients when admittedly, his employees provided incorrect information to clients regarding the owner, board of directors, trading being in dollars, etc. Further, charging of unreasonable fee from the clients which in many cases exceeded the annual income and the proposed

investment of the client recorded in his risk profiling is also tantamount to deceptive behaviour on part of the *Noticee.*

40. An IA cannot make a false statement without having reasonable grounds for believing it to be true as mandated in PFUTP Regulations. An investment adviser cannot sell products guaranteeing assured returns to investors as was being done by the *Noticee* in the present case. Knowing fully well that all investment in stocks, derivatives, etc. in respect of which the *Noticee* was offering investment advice are subject to market risk, he was falsely promising unrealistic assured returns on investments and had communicated the same to clients through emails using look alike email IDs. It is also noted that the advisory process being followed by the Noticee was akin to selling pre-fixed plans and extracting more and more money from the clients. In the communications with the clients, fake names were being used and the clients were being given incorrect and incomprehensible information. The *Noticee* was controlling all the payments made by clients (including those whose complaints have been mentioned in this order) in all the bank accounts linked on his website. The *modus operandi* adopted by the Noticee discussed hereinabove shows that the Noticee was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve advising the client considering his/her financial situation, risk appetite, financial goal, prior experience, etc. From the findings discussed hereinabove it is clear that the Noticee was running a pre-meditated device, plan or scheme whereunder, the employees / tele-callers / representatives of Noticee would lure gullible investors by misrepresenting, making unrealistic profit commitment, etc. and then more and more money would be extracted from them by selling them various products which did not even match their risk profile in many instances, and also while services under existing packages were still running.

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

"(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly

…"

42. Therefore, I find that the fraudulent activities / dealings on part of the *Noticee,* of the nature discussed in preceding paragraphs, and summarised and analysed in paragraphs 38-41 above, are in violation of the provisions of section 12A(a), (b) and (c) of the SEBI Act and regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations.

43. It is noted that the *Noticee* has not been fair in its dealing with his clients and has not been transparent about the fee charged from its clients. The fee charged to the clients is also unreasonable. *Noticee* has adopted unethical business practices/ modus operandi (promising assured returns, selling products meant for high-risk bearing clients to medium risk-bearing clients, taking payments in advance from clients for products / services while other services are running without assessing their performance for the clients, etc.) to hoodwink the clients into buying/subscribing multiple products in order to maximize fee for his own benefit. The act of *Noticee* is in complete disregard to the responsibility entrusted on him under IA regulations to act in fiduciary capacity and in the best interest of its clients and prioritizing client's interest above his own. In order to maintain fiduciary relationship, one of the essential elements is to strictly adhere to the Code of Conduct for an Investment Adviser prescribed under the IA Regulations. Looking at the activities and manner of operation of *Noticee* in the present case, which have been discussed in detail in the preceding paragraphs, I am of the view that *Noticee* failed in its responsibility towards its clients and has violated regulation 15 (1) of IA Regulations and has also failed to abide by clauses 1, 2 and 6 of Code of Conduct for Investment Advisers provided under the IA Regulations read with regulations 15 (9) thereof.

44. Regulation 17 of the IA Regulations, *inter alia*, stipulates the IA to ensure that the investment advice provided to the clients is appropriate to their risk profiles. The regulation further requires that the IA should understand / consider the nature and risks of products or assets, and the IA shall also have a reasonable basis for believing that a recommendation provided meets the investment objectives. In the present case, it is noted that the *Noticee* did not follow any process for selecting investments based on client's investment objective and financial situation, rather majority of the clients have been sold pre-fixed plans (in certain cases promising unrealistic returns) irrespective of their financial situation, investment objective, etc. with the sole purpose of extracting more and more fee from the clients. I, therefore,

find that the *Noticee* has violated regulation 17(a), (c), (d) and (e) of the IA Regulations.

45. Regulation 21(1) of the IA Regulations requires the IA to redress investor grievances promptly. As elaborated earlier, with regard to an investor complaint, the *Noticee* forced the complainant to withdraw the complaint and made further provision of services contingent to such withdrawal of complaint. This is in stark contradiction to the claim of the Noticee that it has put in place adequate procedure for expeditious grievance redressal [required under regulation 21(2)]. I, therefore, find that the *Noticee* has violated regulation 21(1) and (2) of the IA Regulations.

DIRECTIONS AND MONETARY PENALTY:

46. The SCN, *inter alia,* envisages issuance of a direction to the *Noticee* for refund of the amount of ₹ 7,53,94,971 received from the clients/investors/complainants on or after April 1, 2018, as *fees* or consideration or in any other form in respect to the investment advisory activities. In this regard, I note that directing a registered IA to refund the fee would be justified in cases where the said IA has collected the fee from clients / investors without being eligible for the same. In the present case, the SCN does not allege that the *Noticee* was ineligible to collect fee or was collecting fee without being registered. It is also not alleged in the SCN that the *Noticee* had entered into void or voidable agreements with its clients whereunder fee was paid by the clients. It is pertinent to mention here that the charges levelled in the SCN, as discussed earlier, have been based on the activities / conduct of the *Noticee* as an IA registered with SEBI, and after being considered from that perspective only, have been found to be in violation of the provisions of PFUTP Regulations and IA Regulations, as has already been noted. However, the SCN does not crystalize as to what part of the total fee of ₹ 7,53,94,971 was collected by the *Noticee* in violation of the provisions of IA Regulations / PFUTP Regulations / SEBI Act. Taking the above into account, in my view, the direction to refund the *fee* collected by the registered IA (*Noticee*) would not be suitable in the present case, and other directions need to be considered.

47. I note that a person acting as a securities market intermediary is expected to protect the interests of investors in the securities market in which he/she/it operates and it does not befit him to become a party to any market misconduct. Every market intermediary is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and not be motivated purely by prospects of financial gain. The intermediary should not abuse the certificate of registration granted to it, in any manner, for carrying out any non-genuine, deceptive or fraudulent acts. Since the conduct of *Noticee* discussed in preceding paragraphs does not appear to be in the interest of investors and the securities market and the alleged violations of the provisions of SEBI Act, PFUTP Regulations and IA Regulations have been established, I am of the view that necessary directions are required to be issued to the *Noticee* restraining him from the securities market for an appropriate period of time.

48. The SCN also envisages penalty under sections 11B(2) and 11(4A) read with sections 15HA, 15HB (for violations prior to March 8, 2019) and section 15EB (for violations subsequent to March 8, 2019) of SEBI Act in respect of the violations alleged therein. As discussed in previous paragraphs, the violations of provisions of SEBI Act, PFUTP Regulations and IA Regulations (for the period before March 8, 2019 and even afterwards) have been established against the *Noticee.* Therefore, I find that monetary penalty under section 15HA, 15HB and 15EB as envisaged under the SCN is attracted for the violations committed by the *Noticee.*

49. It is relevant to mention here that for the imposition of penalty under the provisions of the SEBI Act, guidance is provided by Section 15J of the SEBI Act. The said provision reads as follows:

> ***"Factors to be taken into account while adjudging quantum of penalty.***
> ***15J.*** *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

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

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

(c) the repetitive nature of the default.

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

50. It is noted that in the instant case, the SCN has not brought out the quantum of profit/gains made by the *Noticee* while selling high-risk products to medium risk-bearing clients, promising assured returns, misrepresenting the clients and collecting unreasonable amount of fees. I also note that the SCN does not quantify the loss which the clients have suffered on account of the *Noticee'*s acts and conduct. However, as discussed earlier in paragraphs 38-42, the *Noticee* in the present case has indulged into multiple acts which have been found to be fraudulent and in violation of the provisions of SEBI Act and the PFUTP Regulations. Further, the *Noticee* has also indulged into multiple acts / omissions which have been found to be in violation of the IA Regulations. It is also relevant to note from *Noticee's* submissions that from the year 2017-18 till 2022-23, the *Noticee* has provided services to more than a thousand clients (total 1542 clients including the repeated number of clients who would have continued with the *Noticee* over the said period). It is noteworthy that the present SCN is based upon an examination of complaints of 27 clients only and therefore, the violations committed by the *Noticee* could have been much more than what has been discussed in the preceding paragraphs. Further, as on the date of this order, there are 12 investor complaints pending against the *Noticee* on the SCORES portal. In my view, the above factors need to be weighed in while arriving at the amount of penalty to be imposed on the *Noticee.*

51. Therefore, I, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B(1) of the SEBI Act read with regulation 35 of Intermediaries Regulations and regulation 28 of IA Regulations hereby issue the following directions against the Noticee:

a) The *Noticee* is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of two (2) years from the date of this order.

b) The *Noticee* is also restrained from associating himself as a director or key managerial personnel with any listed public company or any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period of two (2) years from the date of this order.

c) The *Noticee,* in respect of his clients who have continuing services as on the date of this order, shall ensure pro-rata refund of the fee paid by them, within a period of 30 days from the date of this order.

d) The *Noticee* is directed to resolve the complaints pending against him in the SCORES portal or otherwise, and make refunds that may be required to be made for resolution of the complaints, within a period of 30 days from the date of this order.

e) Any refund to be made by the *Noticee* to his clients pursuant to this order shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channel, which ensures audit trails to identify the beneficiaries of refunds.

f) The *Noticee* shall place a copy of this order on his website and shall also send a copy of this order to all his clients through email within 10 days from the date of this order.

g) The *Noticee* shall within a period of 3 months from the date of this order, furnish a report to SEBI addressed to the "*Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Depatment, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051*", duly certified by a Chartered Accountant,

certifying that the directions issued at paragraph 51(c) to (f) have been complied with.

52. Further, in exercise of the powers conferred upon me under sections 11(4A) and 11B(2) read with sections 15HA, 15HB (for violations prior to 8.3.2019), 15EB (for violations subsequent to 8.3.2019) and 15J of the SEBI Act, I hereby impose the following monetary penalty:

Name of the Noticee	**Violation of the provision which has been established**	**Provision under which penalty is imposed**	**Amount of Penalty (₹)**
Mr. Mukesh Vishwakarma, Proprietor of Striker Stock Research	Section 12A (a),(b) and (c) of SEBI Act read with Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations	Section 15 HA	15,00,000
	Regulation 15(1), 15(9), 17(a), 17(c), 17(d), 17(e) and regulation 21(1), 21(2), clauses 1, 2 and 6 of Code of Conduct for IA specified in Schedule III of the IA Regulations [for violations prior to 08.03.2019]	Section 15 HB	2,00,000
	Same violations as noted in row above committed subsequent to 08.03.2019	Section 15 EB	2,00,000
Total			**19,00,000**

53. The *Noticee* shall remit / pay the said amount of penalties within forty five (45) days from the date of receipt of this order. The *Noticee* shall remit / pay the said amount

of penalties either through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of ED/CGM (Quasi-Judicial Authorities) -> PAY NOW, or by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai. In case of any difficulties in online payment of penalties, the *Noticee* may contact support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "*The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051*" 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)	

54. This order comes into force with immediate effect.

55. This Order is without prejudice to the right of SEBI to initiate / continue other actions against the aforementioned entity in accordance with law.

56. The directions issued vide this order do not preclude the clients /investors to pursue other legal remedies available to them under any other law, against the *Noticee* for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

57. A copy of this order shall be sent to the *Noticee*, recognized Stock Exchanges, the relevant Banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

58. Further, a copy of the order shall also be sent to Government of Madhya Pradesh for their information and action, if any.

Sd/-

AMARJEET SINGH

EXECUTIVE DIRECTOR

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: February 21, 2023

Place: Mumbai