

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER**

Under Sections 11(1), 11(4), 11B(1), 11(4A) and 11(B)(2) read with Section 15I of the Securities and Exchange Board of India Act, 1992 and Rule 4 of SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995.

In the matter of Ms. Sonika Namdharani, Proprietor of M/s Fincap Research Investment Advisor

In respect of –

Sl. No.	Noticee	PAN
1.	Ms. Sonika Namdharani, Proprietor of M/s Fincap Research Investment Advisor	AXWPN9795L
2.	Mr Mahavir Prasad Mundra	AQYPM8250G

(The aforesaid entities are hereinafter individually referred to by their respective names or Noticee number, and collectively as “the Noticees”).

Background:

1. M/s Fincap Research Investment Advisor, Proprietor – Ms.Sonika Namdharani (*Noticee 1*) is registered with Securities and Exchange Board of India (hereinafter referred to as "SEBI") as an Investment Adviser (hereinafter referred to as "IA") bearing Registration No. INA100010545. Mr. Mahavir Prasad Mundra (*Noticee 2*) is husband of *Noticee 1*, Ms. Sonika Namdharani.
2. SEBI conducted inspection of *Noticee 1* for the period from April 01, 2018 to November 30, 2019 (hereinafter referred to as "Inspection Period"). The inspection was carried out from December 2, 2019 to December 5, 2019 at the office address(es) of *Noticee 1* i.e. "A-3, Arihant Nagar, Behind S K Plaza, Near Sajjan Vatika, Bhilwara, Rajasthan - 311001" and "D-22, Basant Vihar Colony, Near Circuit House, Bhilwara, Rajasthan".

Show Cause Notice, Reply and Personal Hearing:

3. Based on the findings of the inspection, a Show Cause Notice dated July 14, 2022 (hereinafter referred to as "SCN") was issued to the *Noticees*. The present

proceedings emanate from the said SCN, wherein it has been alleged that provisions of the SEBI (Investment Adviser) Regulations, 2013 (hereinafter referred to as “IA Regulations”), Schedule II of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “Intermediaries Regulations”) and SEBI PMLA Master Circular dated July 4, 2018 have been violated by the *Noticees*. Besides this, the *Noticees* have also been alleged to have violated the provisions of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”), and Regulations 3 (a), (b), (c) and (d) and Regulation 4(1), 4(2)(k) and 4(2)(s) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”).

4. The SCN has, *inter alia*, alleged the following –

(i) Noticee 1 is run and controlled by Noticee 2 instead of its proprietor Ms. Sonika

The operations of Noticee 1 including providing advisory services were handled by her husband i.e. Noticee 2 who is neither registered with SEBI as Investment Adviser nor is his name mentioned as a representative of investment adviser. This act of Ms. Sonika allegedly, is an act of fraud (as defined in Regulation 2(1)(c) of PFUTP Regulations) since the registration to act as an IA was granted to her and not to Noticee 2. Therefore, Noticee 2 is running investment advisory firm without taking registration from SEBI and the act of Noticee 2 is also an act of fraud as defined under Regulation 2(1)(c) of PFUTP Regulations.

The aforesaid act of Noticee 1 allowing unregistered person namely Noticee 2 to act as an IA, indicates that Noticee 1 is not a person with adequate integrity, reputation and character and it is alleged that Noticee 1 is not satisfying Regulation 6(f), 13(a) and Clauses 1 and 8 of Schedule III of IA Regulations, 2013 and Schedule II of Intermediaries Regulations. Further, it is alleged that Noticee 2 has violated Regulation 3(1) of IA Regulations by running and controlling the business of investment advisory without taking registration from SEBI.

(ii) Noticee 1 obtained IA Registration by submitting Fake Experience Certificates

It was observed that Ms.. Sonika had provided wrong information and fake experience certificates to demonstrate her knowledge and capability to undertake investment advisory work and obtained registration from SEBI as Investment Adviser. The operations of IA including providing advisory services were handled by her husband Noticee 2. The above conduct of Noticees 1 and 2 comes under the definition of ‘fraud’ as mentioned in Regulation 2(1)(c) of

PFUTP Regulations. As per IA Regulations, IA shall abide by the provisions of SEBI Act and Regulations. Thus, on account of the above, it is alleged that Noticee 1 violated Regulation 13(a) of IA Regulations.

(iii) Noticee 1 engaged representatives for rendering Investment Advice without registration and information to SEBI

None of the representatives of Ms.. Sonika had fulfilled the requisite qualification and certification requirements as per Regulation 7 of IA Regulations. It was observed that Noticee 1 in the application dated March 12, 2018, while seeking registration as IA, had provided false declaration that all her representatives would comply with certification and qualification requirements under Regulation 7(2) of IA Regulations, at all times. It is alleged that Noticee 1 has violated the provision of Regulation 7(1), 7(2) and 15 (13) of IA Regulations.

(iv) Noticee 1's operations are conducted from office not registered as its Registered office / Branch

It is alleged that Ms.. Sonika took registration from SEBI by providing false information and declaration to SEBI that Noticee 1 would conduct her business from Bhilwara, Rajasthan. The same was disseminated on SEBI website for the information of general public. However, Noticee 1 actually carried out her business from Indore, Madhya Pradesh and deceived the general public. Therefore, on her failure to inform about the change in registered address which is material information for a registered intermediary, Noticee 1 has violated Regulation 13(b) and Clauses 1 and 8 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations. By deliberately changing the registered address of the IA, both the Noticees have deceived the general public and such act comes under the definition of 'fraud' as mentioned in Regulation 2(1) (c) of PFUTP Regulations.

(v) Continuation of operations of Noticee 1 even after expiry of NISM certificates

It was observed that NISM Series X-A and Series X-B certificates of Ms. Sonika, as submitted with application had expired on October 31, 2019. Thus, it is alleged that Noticee 1 has violated Regulation 7(2) read with Regulation 15(13) of IA Regulations.

(vi) Submission of false information in pre-inspection questionnaire and during the inspection

Noticees provided false information regarding number of clients and turnover in response to pre-inspection questionnaire to SEBI. It is alleged that the

objective of Noticees was to mislead the inspection team and to hide details regarding actual number of clients and amount of revenue generated by Fincap. The above conduct of both the Noticees comes under the definition of 'fraud' as mentioned in Regulation 2(1)(c) of PFUTP Regulations. Further, Noticee 1 has violated Clauses 1 and 2 of the Code of Conduct as mentioned in the Schedule III read with Regulation 15(9) of IA Regulations for not providing accurate information in response to the pre-inspection questionnaire.

(vii) Risk Profiling Questionnaire

No uniformity was followed by Noticee 1 for Risk profiling. Risk Profile questionnaires were vague, ambiguous and misleading. The questions were framed to make the clients fall under the high risk category so that they can be offered complex products like derivatives. Further, few questions were leading questions and prompted the clients to respond to the questions in a certain way. It is alleged that Noticee 1 has violated Regulation 16(b)(iii), Regulation 16(d)(i) and (ii) of IA Regulations.

(viii) Non availability of supporting documents for risk profiling

It was observed that Noticee 1 had not obtained any supporting documents/evidence from clients while doing risk profiling of client and risk profiling was being done merely on the basis of telephonic conversation with client and information extracted from Central KYC. It is alleged that Noticee 1 has violated the provision of Regulation 19 (1) and 19 (2) of IA Regulations.

(ix) Non-communication of Risk Profile and suitability assessment to clients and starting investment advisory services without confirmation of client on Risk Profile

Noticee 1 failed to produce any documentary evidence of confirmation received from the clients for the Risk profile and suitability assessment form in respect of 40 sample clients selected for examination. It was also observed that Risk profile and suitability assessment sent to the clients (around March 2019 or April 2019, when IA had obtained digital signature) had not been signed and dated by Noticee 1. It is alleged that Noticee 1 has violated Regulation 16(e) of SEBI (IA) Regulation, 2013.

(x) Advisory Services Offered Prior to Risk Profiling

It was observed that prior to the risk profile of the client, Noticee 1 had already sold investment advisory services and had charged huge amount of fees before the completion of risk profiling of the clients. It was observed that out of 33 clients, in case of 4 clients, the service tenure start date was before date of risk

of client. It is alleged that Noticee 1 has violated Regulation 17(a) and Clauses 1, 2 and 4 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations. The above conduct of Noticee 1 also falls under the definition of 'fraud' as mentioned in Regulation 2(1)(c) of PFUTP Regulations.

(xi) Suitability Assessment

It is observed that Noticee 1, sold high fees product to client without considering Annual Income of Client and Proposed Investment Value. It charged disproportionate/ unreasonable fees/ charges towards its services in comparison to client's assets/ investment amount, loss absorbing capacity and financial strength and sold products without taking into consideration the investment goal or age of the client and incorrectly classified certain clients as HNIs. This indicates that Noticee 1 suggested products in disregard to the risk profile of the client and did not follow the requirement of suitability advice to its clients and kept its own interest ahead of his clients' interest and failed to take due care and do due diligence to ascertain risk profile of the client and to offer him suitable advice. Therefore, it is alleged that Noticee 1 has violated Regulations 15(1), 17(a), 17(d), 17(e) and Clauses 1, 2 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

It is observed that Risk Profiles were revised within a short period (in some cases within 3 days) with illogical changes in response to the questions to sell unsuitable high risk products to clients. The above conduct of both the Noticees comes under the definition of 'fraud' as mentioned in Regulation 2(1)(c) of PFUTP Regulations.

(xii) Selling of services/ products in dubious manner with unethical intent and unfair and unreasonable advisory/service fee charged from the client

It was observed that Noticee 1 did not have any products/services designed by its own, rather the same were copied from another IA namely "Epic". 11 out of 22 products/services offered by Noticee 1 in Equity, futures and options and commodity segments are such where monthly advisory charges are equal to or more than ₹ 25,000. Further, service charges for some products were as high as ₹ 1,35,000 per month.

It was also observed that in most of the products, Noticee 1 was giving assured returns claims in the details of products to clients

It is alleged that Noticee 1 has failed to abide by Clauses 1 and 2 of Code of Conduct for IAs as provided in Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations.

(xiii) Charging Advisory fees before expiry of tenure of existing service/Collecting multiple payments in short period

It is observed that Noticee 1 sold same product multiple times to the client within a short span of time. The products so sold had overlapping tenures. It was also observed that some of the products sold were similar in nature and the amount of fees charged by Noticee 1 was arbitrary, illogical, unreasonable and unfair. Noticee 1 also failed to provide communication proof of sending invoices to clients with regard to fee charged by them.

The above act of Noticees have been carried out with the purpose of defrauding the clients and to earn maximum fees. The above acts come under the purview of 'fraud' as defined under Regulation 2(1)(c) of PFUTP Regulations, 2003.

Noticee 1 has failed to act honestly, fairly and diligently while dealing with clients. Hence, it is alleged that it has violated Clauses 1, 2 and 6 of Code of Conduct for investment advisers provided in Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations.

(xiv) Non Maintenance of records

It was observed that Noticee 1 failed to provide documents with respect to record in respect of investment advice rendered to clients, such as suitability assessment document of investment advice rendered, message logs of clients, voice recording, etc. It was observed that Noticee 1 failed to provide documents with respect to record of investment advice rendered. It is alleged that Noticee 1 has violated the provisions of Regulation 19 (1) and Regulation 19 (2) of IA Regulations.

(xv) Failure to provide training in relation to PMLA/ AML Provisions

It was observed that Noticee 1 failed to provide documents with regards to date of training, subject of training, number of participants, materials distributed, attendance sheet of employees, etc. related to provisions of PMLA/AML. It is alleged that Noticee 1 has violated Clauses 8 and 9 of Code of Conduct for Investment Advisers as mentioned in Schedule III of IA Regulations read with Regulation 15(9) of IA Regulations and Clause 2.12.2 of the SEBI PMLA Master Circular dated July 4, 2018.

(xvi) *It is alleged that the modus operandi adopted by Noticee 1 along with Noticee 2 noted in preceding paragraphs shows that the said Noticees were actually not practicing investment advisory in the manner envisaged under the IA Regulations and were knowingly acting in a deceitful manner. It is further alleged that Noticee 1 along with Noticee 2 was running a scheme and defrauding her clients, with an intention to maximize its income through advisory fees, without*

keeping in mind the requirements of the clients and keeping own interest ahead of the client's interest. Therefore, it is alleged that the Noticees, through the fraudulent act/ scheme, violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3 (a), (b), (c) and (d) and Regulation 4(1), 4(2)(k) and 4(2)(s) of the PFUTP Regulations.

5. Accordingly, the SCN called upon the *Noticee 1* to show cause as to (i) why appropriate directions under Sections 11B(1) and 11(4) read with section 11(1) of SEBI Act and Regulation 35 of Intermediaries Regulations should not be issued against her and (ii) why suitable directions for imposing penalty under Rule 4 of Penalty Rules and Section 15I, Section 11B(2) and 11(4A) of SEBI Act read with Regulation 35 of Intermediaries Regulations, should not be issued against *Noticee 1*.
6. The SCN has further called upon *Noticee 2* to show cause as to why appropriate directions under Sections 11(1), 11(4), 11B(1) of SEBI Act and/or directions for imposition of appropriate penalty under Rule 4 of Penalty Rules and Section 15I, Section 11B(2) and 11(4A) of SEBI Act, should not be issued against *Noticee 2*.
7. The *Noticees* vide letter dated August 09, 2022 filed their combined reply to the SCN, *inter alia*, submitting the following:
 - (i) The statements given by the Respondents before the Inspection Team were under extreme pressure and disturbed state of mind in those circumstances. And therefore, the statement may not be taken on face value.
 - (ii) With regard to allegation that Fincap is run by Respondent No. 2 instead of its prop, Fincap is proprietary firm owned by the Respondent No. 1. As per Reg. 7(2) of IA Regulations, the Respondent No. 1 is eligible to conduct the advisory business. Looking at the size of business, it is difficult to manage a business without a proper team in place. Apart from technical research and analysis, an Investment Advisor needs assistance in other area of business too which includes administrative, accounting, and other necessary back-office work. The Respondent No. 2 was just assisting in those necessary administrative, accounting and back-office work of the business of the Respondent No.1 and that such kind of assistance cannot be construed as an act of controlling the business by the Respondent No.2.
 - (iii) With regard to allegation pertaining to submission of Fake Experience, Respondent No. 1 was employed with one Capital Ways from 30th Nov 2016 to 31st Dec 2017 and SVV Associates from 1st June 2009 to 30th Sept 2014.

Erroneously, in her statement she had mentioned period from 2010-2014 in Capital Ways. The statement given by Respondent No. 1 was under extreme pressure and therefore erroneously such statement was given. The error is regretted.

- (iv) As per the provisions of Reg. 7(2) of IA Regulations the individual registered as Investment advisor needs to comply with certification requirements as they will be offering Investment Advice. In case of staff, they were not involved in offering investment advice, and their roles were restricted to coordinating with client. The Respondent No. 1 as the prop. of the firm had adequate qualification and certification requirements to perform function as an Investment Advisor under IA Regulations and on the basis of the same she was granted registration by SEBI. So far as Respondent No. 2 is concerned, he was not involved in providing the Investment Advisory services, but was merely assisting his wife Respondent No. 1 in her Investment Advisory Business.
- (v) Respondent No. 1 has not provided any false declaration as to place of business. During visit by the Inspection team at the address submitted to SEBI at time of registration, the person present at the aforesaid premises has confirmed that the Respondent No. 1 was there as a tenant and shifted to the new premises of which address was also given to Inspection team. The statement itself reveals that the Respondent no. 1 had office at the given address and therefore it would be wrong to construe that the Respondent No. 1 was not actually operating from the declared place of business, i.e., Bhilwara. The statement given by Respondent No. 2 was under pressure and he misunderstood the question asked by the investigating team. The Respondent No. 1 is having back-office operations in Indore. It would be wrong to say that the Respondent No. 1 with fraudulent intentions hid the facts. Further, there is no complaint from any customer regarding address.
- (vi) There has been a delay in renewal of NISM Certificates, the delay be condoned.
- (vii) While submitting the data via email dated September 20, 2019, the Respondent No.1 has provided the data with due care and diligence, however on reconciliation of data, it was observed that few records were left-out in the aforesaid submission, the same were rectified at later stage and provided the true Information at the time of Inspection on December 3, 2019. Therefore, it would be wrong to construe that the objective was to mislead the Inspection

team and to hide details regarding actual number of clients and amount of revenue generated by Fincap, from SEBI.

- (viii) At the time of application for registration as IA, the Respondent No. 1 had furnished "Draft Risk Profiling" form along with the application. At that time no objection was raised with regard to the format of questions or their intent. The Respondent No. 1 believed that the Risk Profiling Form was duly assessed by SEBI at time of registration and the registration was granted to Fincap only after due satisfaction. Respondent No. 1 has been using the same form for all its clients. Therefore, it is incorrect to say that, the Risk Profiling form has leading questions and prompts clients to respond to questions in certain way and the allegation is thus denied.
- (ix) Respondent No. 1 has checked KYC of the clients through registered KRAs for all clients. However, she has not kept records of telephonic conversations with clients, as it was not mandated by SEBI either in Regulations or by way of circular/notifications. Therefore, merely in the absence of call recordings which was not mandatory erstwhile it is wrong to say that appropriate supporting documents for risk profiling has not been obtained and maintained by the Respondent No. 1.
- (x) The allegation regarding non-communication of Risk Profile and Suitability Report is wrong. Respondent No. 1 has communicated both documents (Risk Profile and Suitability Assessment) to the clients via email.
- (xi) Prior to providing the IA services, Respondent No. 1 has done proper KYC, Risk Profiling and Suitability Assessment of the clients. Thereafter, only suitable services are sold to the client. None of the clients had disputed the risk profiling and suitability assessment done by the Respondent No. 1.
- (xii) With regard to allegation of disproportionate/ unreasonable fees/charges towards its services, it is submitted that the Fee charged to clients are mentioned on Fincap's website. The clients have agreed to pay and avail services of their choice within their risk appetite. There are no such cases in observation where Fincap have made changes in the risk profiling leading to substantial change in the Risk Appetite of the client. Moreover, no client has disputed the risk assessment done by Fincap. Any observation by Inspection Team leading to contrary finding may be mere exception to the majority of cases.

- (xiii) It is alleged that Fincap is involved in selling of services/products in dubious manner with unethical intent and unfair and unreasonable advisory/service fee charged from the client. In this regard it is submitted that the Respondent No. 1 has provided the services to client based on risk profile and suitability assessment. The Fees charged by Respondent No. 1 is agreed by client and no unfair means are applied to collect fees from the client. The client in some cases opt for various services and only after their consent these services are given to them.
- (xiv) With regard to allegation that Fincap is charging advisory fees before expiry of tenure of existing service/collecting multiple payments in short period, prior to the SEBI (Investment Advisers) (Amendment) Regulations 2020 came in force, there was no restriction on amount of subscription fee to be collected or products to be offered. In the absence of any regulation, multiple subscriptions were offered to the clients. All subscriptions were sold through online mode and at arm's length. None of the clients were sold unsuitable services. None of the subscriptions sold to the clients are under duress and all the clients who subscribed multiple subscriptions had their own free will.
- (xv) Respondent No. 1 has maintained proper records pertaining to all necessary documents. However, in the absence of specific provisions pertaining to maintenance of communication records, the data is not maintained. The Respondent No. 1 has put best effort to maintain the records in compliance with provisions of Reg. 19 of IA Regulations. The same has been made available to the Inspection Team at the time of Inspection.
- (xvi) Respondent No. 1 has provided training for PMLA/AML Guidelines to employees. The PMLA Policy is already provided to you during Inspection.
- (xvii) The Respondent has served several hundred clients over the years. Most of its clients have been able to achieve their desired goals while taking its advice, compared to 9 complaints received on SCORES. None of the complaints against Fincap remain unresolved.
- (xviii) Respondents have not acted in fraudulent manner in any ways and means and whatever lapse observed, even if considered to be true, are merely of regulatory/ procedural in nature and not fraudulent and unfair practices. The act of the Respondents during the course of business has been bonafide and there was no intention of the Respondents to defraud Fincap's clients. Had it

been the same the Respondents would not have received mere 9 complaints, which stands resolved as on date of this reply.

(xix) The *Noticees* have relied on the following case laws/ orders wherein the *Noticee* was not charged with violations of PFUTP Regulations.

- a. Final Order dated February 08, 2022 passed by Whole Time Member, SEBI in the matter of GRS Solution (Prop.: Mr. Nilesh Vispute)
- b. Order dated January 20, 2017 passed by Whole Time Member, SEBI in the matter of CapitalVia Global Research Limited.

8. The *Noticees* were granted an opportunity of hearing on October 04, 2022. However, based on the request of the *Noticees*, the said hearing was adjourned to October 28, 2022. *Noticees'* Authorized Representatives (hereinafter referred to as "ARs") namely, Adv. Vivek Shrivastava and CA Pulkit Vimal Mehta appeared for the hearing. During the hearing, the ARs reiterated the submissions made by the *Noticees* vide their said letter dated August 09, 2022. Further, during the hearing, the ARs on behalf of the *Noticees* were asked to submit the *Noticees'* response on certain queries, along with supporting documents. The said queries were also communicated to the ARs and the *Noticee* 1 vide email on the same day, and they were asked to submit the *Noticees'* response within 15 days. As no response was received from the ARs or the *Noticees* even after the given timeline, reminders were also sent vide emails dated November 14, 2022 and November 22, 2022. *Noticee* 1 vide email dated December 01, 2022 replied that her counsels are busy in personal family program so they will reply before December 07, 2022. Subsequently, *Noticee* 1, vide email dated December 07, 2022 further informed that they will submit the reply on or before December 09, 2022.
9. The *Noticees*, vide their e-mail dated December 09, 2022, replied to the queries raised during the hearing. The said queries along with the reply submitted by the *Noticees* are given below:

(i) **Kindly provide Financial year-wise number of clients and amount of fees collected by Fincap Research Investment Advisor since registration.**

Reply: Detail of Revenue and Clients for each year of operations is as under:

Table - 1

Sr. No.	FY	No. of Unique Clients	Fee Collected (in ₹)
1	2018-19	196	98,00,000
2	2019-20	135	60,00,000
3	2020-21	74	34,50,000
4	2021-22	4	16,000
			1,92,66,000

- (ii) The **Noticees** in their reply dated August 09, 2022 have not made any submissions regarding the allegation that Fincap was giving assured returns claims in the details of products to clients. Kindly provide your response on this allegation, along with supporting documents.

Reply: Noticees have denied this allegation wrt assured profit/unrealistic returns. The information published on the website is purely a marketing gimmick. The features mentioned on the website for each product are only for information purpose and in no way, they have assured or guaranteed any return on the website. Furthermore, in the welcome mail given to each client it is clearly mentioned that- '*Stock market has inherent market risk, hence we do not claim any profit guaranteed services*'. Thereby, each client was made aware about the risk associated with securities market before services were commenced. Noticees have submitted a copy of sample welcome email in this regard.

- (iii) Kindly provide the current status of operations of Fincap Research. The status may be submitted branch/ location wise.

Reply:

Table - 2

Sr. No.	Location	Function	Status
1.	Bhilwara	Head Office	Operation Ceased
2.	Indore	Back Office	Operation Ceased

- (iv) Kindly provide date and reasons for ceasing of operations, if any, from any branch/ location. In case of ceasing of operations from any branch/ location, please inform how the interests of clients were taken care of.

Reply: Location wise date and reason for cessation of operations:

Table - 3

Sr. No.	Location	Date of Cessation	Reason
1.	Bhilwara	-	Bhilwara office operations were ceased after completion of all advisory mandates. The key reason was unwillingness to function as an Investment Advisor
2.	Indore	-	During inspection they were informed that they cannot operate from more than one place, therefore they had shut down back-office operations at Indore and operated solely from Bhilwara.

Since all services and client interactions were conducted via digital/online mode, there was no location constraint in performance of their duties as IA.

Further, there were no investment advisory mandates pending after cessation of operation from Bhilwara.

- (v) **It was informed by the representatives of the *Noticees* during the hearing that operations from Indore office were ceased immediately after inspection. Kindly furnish details of actual operations carried out from Indore office and reasons for suddenly ceasing of the operations from Indore office. Also, considering sudden ceasing, kindly furnish details as to how the transition from Indore office to Bhilwara office was carried out.**

Reply: Indore office operations were ceased immediately after the inspection was carried out, and during the inspection *Noticees* were informed that they cannot function from more than one place of business. The operations at Indore office were restricted to back-office activities such as documentation, customer support, etc. These functions were immediately shifted to Bhilwara. Their operations including provision of services and interactions with clients were completely online and through digital mode. No in-person handling of clients was undertaken from either office in Indore and Bhilwara.

- (vi) **Kindly provide the reasons for using 2 Risk Profile questionnaires- one with maximum total score 480 and another with maximum total score 550.**

Reply: During the course of their IA activity, they had used the same form for most of the clients. However, there was a reset in weights for better understanding of the client's profile due to which a new form with a higher score was created. The questions of both the risk profile forms are the same.

- (vii) **Kindly provide the reasons for selling same service multiple times to clients within short span for the same tenure (Refer Annexure 13 of SCN).**

Reply: *Noticees'* website contained all the pricing and features of their services. For convenience, clients had option to pay either the full amount or in part for the prescribed subscription charges of services. The clients with their liberty may choose to pay in parts. Thus, *Noticees* have not sold same services multiple times, rather they have collected payments in parts for specific service offered for a specific duration, however each time the payment is collected an invoice to the tune of amount received and corresponding period is created for accounting purpose.

- (viii) **Kindly provide the status of NISM certification held by Sonika Namdharani and inform if the same were renewed after October 31, 2019.**

Reply: The NISM Certificate of Sonika Namdharani has expired and not renewed after October 31, 2019.

- (ix) **SCN, inter alia, alleges that fees were collected from clients prior to risk profiling. Also, in some cases, service tenure start date was before the date of risk profile of client. In reply, noticees have submitted that prior to providing IA services, risk profiling and suitability assessment were done. Please clarify.**

Reply: There may be instances where the clients have paid prior to risk profiling, however it is pertinent to note that, services have only been started after preparing and communicating risk profile and suitability assessment of the clients and the same has never been disputed by the clients. The first payment collected from the client was usually a registration charges which was adjusted to the fees of services which was offered to him during after due risk profiling.

- (x) **SCN, inter alia, alleges that risk profiles were revised within short period in respect of 5 clients. In reply, noticees have submitted that there are no such cases in observation where Fincap have made changes in the risk profiling leading to substantial change in the risk appetite of the client and that no client has disputed risk assessment. It is however noted that in case of 4 out of the said 5 clients, risk category was revised from 'medium' to 'high'. Please offer your clarification in this regard.**

Reply: Only 4 cases have emerged where changes in risk profile form leading to substantial change in risk classification have occurred, however the clients have not disputed the risk profile and availed their services without any grievances. It is therefore, requested that the error may be condoned.

10. The *Noticees*, vide their email dated December 09, 2022 further submitted that so far only 8 complaints in 4 years have been made against them out of the 409 clients served by them, and only 1 complaint is pending to be resolved and there is no pending complaint against them either on SCORES or anywhere else, which shows that they have kept the interest of their clients before their interest. *Noticees* have further submitted that the violations observed are merely of technical nature and without the intention of any fraud against their clients.

Consideration of Issues

11. Before I proceed to examine the individual allegations made against the *Noticees*, I find it appropriate to deal with the preliminary contention raised by the *Noticees* with

respect to the statement given by them before the Inspection Team. The *Noticees* have submitted that the said statements given by them were under extreme pressure and disturbed state of mind in those circumstances, and therefore, the statement may not be taken on face value.

12. I note that the statements of the *Noticees* on oath before inspecting authority have been relied upon along with other material, for levelling various allegations, as contained in the SCN, against the *Noticees*. The said statements of the *Noticees* were recorded on December 03, 2019 at the address “D-21, Basant Vihar Colony, Bhilwara, Rajasthan”, i.e., at the office premises of the *Noticee* 1 herself. I also note from the said statements that the *Noticees* have acknowledged to have received a copy of the same.
13. Further, from the material available on record, I note that subsequent to the said inspection of *Noticee* 1, the inspection observations were communicated to *Noticee* 1 vide SEBI letter dated March 17, 2021, and comments/ explanations of *Noticee* 1 on the observations/ findings were sought. The said inspection observations included the said statements of the *Noticees* as evidence in support of the inspection observations. *Noticee* 1, vide letter dated September 20, 2021 submitted her reply to the said SEBI letter dated March 17, 2021. On perusal of the said letter dated September 20, 2021, I note that *Noticee* 1 did not raise the contention of statement being given by *Noticees* under extreme pressure and disturbed state of mind. It was only in their reply dated August 09, 2022 to SCN, that the *Noticees* raised the said contention for the first time. Thus, I note that after the statements were recorded on December 03, 2019, the *Noticees* did not raise the said contention immediately or in response to the communication of inspection observations or any time before the SCN was issued to them, and for the first time, in reply to the SCN, they raised the said contention, i.e., after a period of more than two and a half years from the date of recording of statements. These facts clearly show that the submission of the *Noticees of giving the statements under extreme pressure and in a disturbed state of mind*, is merely an afterthought and devoid of any merit.
14. In this regard, I find it pertinent to refer to the judgment of the Hon’ble Rajasthan High Court in *PCIT v. Shri Roshan Lal Sancheti* in Income Tax Appeal No. 47/2018 dated 30.10.2018, wherein, after referring to the several decisions, it was held as follows:

"This court in CIT, Bikaner Vs. Ravi Mathur, supra, which judgment has been relied by the ITAT in the present case, after considering catena of previous decisions, held that the statements recorded under Section 132(4) of the IT Act have great evidentiary value and they cannot be discarded summarily and cryptic manner, by

simply observing that the assessee retracted from his statement. One has to come to a definite finding as to the manner in which the retraction takes place. Such retraction should be made as soon as possible and immediately after such statement has been recorded by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials by way of duly sworn affidavit or statement supported by convincing evidence, stating that the earlier statement was recorded under pressure, coercion or compulsion..." (emphasis supplied)

It was further held as follows:

"In view of the law discussed above, it must be held that statement recorded under Section 132(4) of the Act and later, confirmed in statement recorded under Section 131 of the Act, cannot be discarded simply by observing that the assessee has retracted the same, because such retraction ought to have been generally made within a reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessee in the belatedly filed affidavit has retracted from their statements. Such retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. Duration of time when such retraction was made, assumes significance and in the present case, retraction has been made by the assessee after eight months to be precise, 237 days."

15. The aforesaid judgment pertains to proceedings under the Income Tax Act, 1961, which are similar in nature to the proceedings under the SEBI Act, and therefore, in my view, the principles applied with respect to retraction of statement in the aforesaid judgment will be applicable in the present proceedings.

16. In view of the above, I am inclined to conclude that the aforesaid contention raised by the *Noticees* that statements given by them were under extreme pressure and disturbed state of mind, is an afterthought, and therefore, cannot be accepted.

17. I shall now proceed to deal with the specific allegations made in the SCN against the *Noticees* in light of their submissions and the material available on record.

A. *Noticee 1* is run and controlled by *Noticee 2* instead of its proprietor *Ms. Sonika*

18. It has been alleged in the SCN that the operations of *Noticee 1* including providing advisory services were handled by husband of *Ms. Sonika* i.e. *Noticee 2* who is neither registered with SEBI as Investment Adviser nor was his name mentioned as a

representative of investment adviser, and the acts of Ms. Sonika and *Noticee 2* are acts of fraud as defined in Regulation 2(1)(c) of PFUTP Regulations. It has also been alleged that the aforesaid act of *Noticee 1* allowing unregistered person namely *Noticee 2* to act as an IA, indicates that *Noticee 1* is not a person with adequate integrity, reputation and character and *Noticee 1* is not satisfying Regulation 6(f), 13(a) and Clauses 1 and 8 of Schedule III of IA Regulations and Schedule II of SEBI Intermediaries Regulations. Further, it has been alleged that *Noticee 2* has violated Regulation 3(1) of IA Regulations by running and controlling the business of investment advisory without taking registration from SEBI.

19. The *Noticees* in their reply to SCN have submitted that *Noticee 1* is proprietary firm owned by Ms. Sonika, and as per Reg. 7(2) of IA Regulations, she is eligible to conduct the advisory business. It has also been submitted that looking at the size of business, *Noticee 2* was just assisting in necessary administrative, accounting and back-office work of the business of the *Noticee 1* and that such kind of assistance cannot be construed as an act of controlling the business by *Noticee 2*.
20. The SCN has relied on the statements of *Noticees* and three other employees of *Noticee 1* for levelling this allegation. I note from the statement of *Noticee 1* on oath before inspecting authority recorded on December 03, 2019, that she has, *inter alia*, herself stated the following (translated extract of her statements from Hindi to English):
- “The operations of Fincap, which include work related to research, investment advice to client, H.R., complaints, etc. is conducted by my husband Mr. Mahavir Mundra. I don’t have knowledge of these work”*
- “Yes, Investment Advisory work in Fincap is conducted by Mahavir Ji only.”*
- “Yes, Inspection team may obtain all the information and documents related to operations of Fincap from Mahavir Ji. I take responsibility of information and documents which are provided by Mahavir Ji.”*
21. The statement of *Noticee 2* recorded before inspecting authority on December 03, 2019, *inter alia*, states the following:
- Question : It appears from the statement of Ms.. Sonika Namdharani- that you are in charge and controlling the operation of M/s. Fincap Research Investment Adviser and also working as Investment Adviser on behalf of her. Whether you agree to this statement. Please explain?*
- Ans; “Yes I agree that I am in charge and controlling the operation of M/s. Fincap Research Investment Adviser and also working as Investment Adviser on behalf of her.”*

22. I also note from the statements dated December 04, 2019 of three other employees of *Noticee 1* namely Mr. Pravin Singh Solanki (Research Analyst), Mr. Ramkrishn Lowanshi (Floor Manager) and Mr. Varun Sharma (Compliance Officer), that they have, *inter-alia*, stated that they never got any instructions related to the operations from *Ms. Sonika* and all the instructions were given by *Noticee 2* only.
23. As has been mentioned earlier, the *Noticees* have sought to retract from the e above statements but the same, as discussed in earlier paragraphs, has already been established to be an afterthought and devoid of any merit. Moreover, apart from the statements of *Noticees*, the SCN has also relied on the statements of three other employees, which have not been refuted by the *Noticees*. The submission of the *Noticees* that *Noticee 2* was just assisting in administrative, accounting and back-office work of the business of the *Noticee 1* is contradictory to the aforesaid statements of *Noticees* and three other employees, and therefore I am unable to agree with the submission of the *Noticees*.
24. In view of the above, I conclude that operations of *Noticee 1* including providing advisory services were handled by *Noticee 2*, instead of proprietor of *Noticee 1*, *Ms. Sonika*.
25. I note that the *Noticees* by their aforesaid acts have undermined the registration process specified in IA Regulations. Registration process, among other things, takes into account various aspects pertaining to the applicant including qualification and certification requirements, fit and proper person criteria, etc. *Noticee 1* by allowing *Noticee 2* to run and control the business of investment advisory has circumvented the registration requirements and eligibility criteria specified in the IA Regulations. I am inclined to take a very serious view on the same.
26. In view of the above, I conclude that *Noticee 1* is not a person with integrity, reputation and character and, therefore, I find that *Noticee 1* is not satisfying Regulation 6(f), 13(a) and Clauses 1 and 8 of Schedule III of IA Regulations, 2013 and Schedule II of SEBI (Intermediaries) Regulations, 2008. I also find that *Noticee 2* has violated Regulation 3(1) of IA Regulations by running and controlling the business of investment advisory without taking registration from SEBI.

B. *Noticee 1* obtained IA Registration by submitting Fake Experience Certificates

27. It has been alleged in the SCN that *Ms. Sonika* in her statement before inspecting authority stated that she was doing “*calling work*” during 2010-2014 in Capital Way Indore, however, *Noticee 1* at the time of registration as IA had produced experience

certificates of working with SNV Associates as “Equity Research Analyst” during the period June 01, 2009 to September 30, 2014 and with Capital ways Financial Services as “Investment Adviser” from November 30, 2016 to December 31, 2017.

28. In view of the above, it has been alleged in the SCN that Ms. Sonika has provided wrong information and fake experience certificates to demonstrate her knowledge and capability to undertake investment advisory work and obtained registration from SEBI as Investment Adviser.
29. Ms. Sonika in her reply has submitted that she was employed with one Capital Ways from 30th Nov 2016 to 31st Dec 2017 and SVV Associates from 1st June 2009 to 30th Sept 2014, and erroneously in her statement she had mentioned period from 2010-2014 in Capital Ways. It has also been submitted that the statement given by Ms. Sonika was under extreme pressure and therefore erroneously such statement was given, and the error is regretted.
30. I note from the statement of *Noticee 1* before Inspecting Authority that she has, inter alia, stated that she was doing “*calling work*” during 2010-2014 in Capital Way Indore, which is contradictory to the statement of *Noticee 1* before Inspecting Authority. Further, I am unable to accept the contention raised by *Noticee* that the statement given by Ms. Sonika was under extreme pressure and therefore erroneously such statement was given, considering my observations in this regard in the preceding paragraphs.
31. It is important to highlight that submission of correct information at the time of seeking registration goes to the very root of the process of registration of investment advisors because an IA under the IA Regulations does not have to meet stringent net worth requirements but is stringently required to show that it is capable of providing investment advice in a considered and professional manner. The previous experience shown by the applicant enables SEBI to assess the competence of the applicant in performing its functions envisaged under the IA Regulations. Thus, submission of experience certificate with incorrect information as to the previous employer or duration of such employment, is tantamount to a *representation made in a reckless and careless manner*, which is one of the elements of “fraud” as defined under regulation 2(1)(c) of the PFUTP Regulations.
32. Therefore, I conclude that Ms. Sonika has provided wrong information and fake experience certificates to demonstrate her knowledge and capability to undertake investment advisory work and obtained registration from SEBI as Investment Adviser. This act of providing wrong information and fake experience certificates, as discussed

above, falls under “fraud” as defined under Regulation 2(1)(c) of PFUTP Regulations. I also find that on account of the above, *Noticee 1* has also violated Regulation 13(a) of IA Regulations.

C. *Noticee 1* engaged representatives for rendering Investment Advice without registration and information to SEBI

33. It has been alleged in the SCN that none of the representatives of *Noticee 1* had fulfilled the requisite qualification and certification requirements as per Regulation 7 of IA Regulations. In view of the same, it has been alleged that *Noticee 1* in the application dated March 12, 2018 while seeking registration as IA had provided false declaration that all her representatives would comply with certification and qualification requirements under Regulation 7(2) of IA Regulations, at all times. It has been alleged that *Noticee 1* has violated the provisions of Regulation 7(1), 7(2) and 15 (13) of IA Regulations.

34. *Noticee 1* in her reply to SCN has submitted that as per the provisions of Reg. 7(2) of IA Regulations, the individual registered as Investment advisor needs to comply with certification requirements as it will be offering Investment Advice. *Noticee 1* has further submitted that staff were not involved in offering investment advice, and their roles were restricted to coordinating with client. It has been further submitted that *Noticee 1* as a proprietor of the firm had adequate qualification and certification requirements to perform function as an Investment Advisor and on the basis of the same, she was granted registration by SEBI. It has also been submitted that *Noticee 2* was not involved in providing the Investment Advisory services, but was merely assisting his wife *Noticee 1* in her Investment Advisory Business.

35. I note that Regulation 7 of the IA regulations was amended w.e.f. September 30, 2020, the provision as it existed prior to the amendment is reproduced as under:

Qualification and certification requirement.

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

(a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association; or

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

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

(a) from NISM; or

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

Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations: Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.

36. Further, prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020, the term 'representative' was defined in the IA Regulations as under:

(r) "representative" means an employee or an agent of an investment adviser who renders investment advice on behalf of that investment adviser.

37. A reading of the above suggests that the expression 'representative' was not meant to be restricted only to non-individual IAs, and can be an employee or agent of an IA, who may be an individual or a non-individual IA. Further, Regulation 7 of IA Regulations specified the qualification and certification requirements for individual IAs and partners and representatives of IAs. Therefore, I do not agree with the argument of Noticees that as per the provisions of Regulation 7(2) of IA Regulations, only the individual registered as Investment advisor needs to comply with certification requirements. Regulation 7 specified qualification and certification requirements for representatives of IAs as well.

38. I further note from the statement dated December 03, 2019 of Noticee 2 before Inspecting Authority, that he has, *inter alia*, stated the following:

27. *It is identified that you are working through your representatives. In this regard please provide list of your representatives who were providing*

investment advice in the name of Fincap Research Investment Adviser during Inspection Period.

Ans. *The representatives during inspection period are/were Ram Krishna Lowanshi, Praveen Singh Solanki, Yogesh Bhatt, Ranjeet Singh Bais, Nitesh Vishwakarma, Ankit Meena, Kirti Ambiya, Payal Makwana, Varun Sharma, Suraj Solanki, Rajni Tirole, Nitin Khandelwal, Pooja Panwar, Balkrishna Lowanshi, Uzma Ali, Vimlesh Verma, Chandan Singh, Deepak Patel, Golu Yadav, Shani Silawat.*

28. *Whether the aforesaid names of representatives of Fincap Research Investment Advisory were informed to SEBI.*

Ans. *No, the names of these employees were not informed to SEBI.*

29 *Please inform whether the aforesaid employees are/were meeting the criteria of representative of Investment Advisor as per IA regulations, 2013 including NISM certificates.*

Ans. *No, they were/are not meeting criteria of representative of Investment Advisor as per IA regulations, 2013 and they do not hold NISM certificates.*

39. I also note from the statement of an employee of *Noticee 1* i.e. Ramkrishn Lowanshi before Inspecting Authority that he has, *inter alia*, stated that neither he nor his team members who used to provide investment advice, have NISM certification.

40. Accordingly, it is noted that the submission of *Noticees* that staff were not involved in offering investment advice and their roles were restricted to coordinating with client is contradictory to the aforesaid statements of *Noticee 2* and an employee of *Noticee 1*, and therefore, I am unable to agree with the submission of the *Noticees*.

41. Therefore, I find that none of the representatives of *Noticee 1* had fulfilled the requisite qualification and certification requirements as per Regulation 7 of IA Regulations, as it existed at the relevant point of time.

42. Further, I note from the registration application of *Noticee 1*, that *Noticee 1*, vide letter dated March 12, 2018, *inter alia*, provided two separate declarations that:

- a) She and all her representatives have obtained such certification as required under regulation 7 of IA Regulations.
- b) All her representatives will comply with certification and qualification requirements under regulation 7(2) of IA Regulations at all times.

43. Thus, from the above, I find that *Noticee 1* in the application dated March 12, 2018, while seeking registration as IA, had provided false declaration that all her representatives would comply with certification and qualification requirements under

Regulation 7(2) of IA Regulations at all times. In view of the same, *Noticee 1* has violated the provision of Regulation 7(1), 7(2) and 15 (13) of IA Regulations.

D. *Noticee 1*'s operations are conducted from office not registered as its registered office / Branch

44. The SCN has brought out that Ms. Sonika in the registration application submitted to SEBI had mentioned the registered address as '*A-3, Arihant Nagar, Behind S K Plaza, Near Sajjan Vatika, Bhilwara, Rajasthan, 311001*'. However, when the inspection team visited the aforesaid address on December 02, 2019, neither *Noticee 1* nor any of her representatives were present at that address. The persons residing there informed that they are tenants and the office of Fincap was at '*D-22, Basant Vihar Colony, Near Circuit House, Bhilwara (Rajasthan) - 311 000*'. Therefore, the inspection team visited the new address.
45. Further, during the inspection by SEBI, it was found that Fincap was conducting its operations from Indore (Madhya Pradesh) since June, 2018 (after getting registration in May, 2018) till November 30, 2019. The operations and some employees were shifted to Bhilwara on December 01, 2019 just before the start of inspection.
46. In view of the above, it has been alleged that Ms. Sonika took registration from SEBI by providing false information and declaration to SEBI that *Noticee 1* would conduct her business from Bhilwara, Rajasthan. The same was disseminated on SEBI website for the information of general public. However, *Noticee 1* actually carried out its business from Indore, Madhya Pradesh and deceived the general public.
47. The *Noticee 1* in her reply to SCN have submitted that *Noticee 1* has not provided any false declaration as to place of business, and *Noticee 1* had office at the earlier Bhilwara address and therefore it would be wrong to construe that *Noticee 1* was not actually operating from the declared place of business, i.e., Bhilwara. It has further been submitted that the statement given by *Noticee 2* was under pressure and he misunderstood the question asked by the investigating team, and that *Noticee 1* is having back-office operations in Indore. It has also been submitted that it would be wrong to say that *Noticee 1* with fraudulent intentions hid the facts, and that there is no complaint from any customer regarding address.
48. Further, in response to queries raised during the hearing, the *Noticees* have submitted that Indore office operations were ceased immediately after the inspection was carried out. *Noticees* have also submitted that during the inspection, they were informed that

they cannot function from more than one place of business. Noticees have further submitted that the operations at Indore office were restricted to back-office activities such as documentation, customer support, etc., and these functions were immediately shifted to Bhilwara.

49. In this context, from the material on record, I have taken note of the following:

a) Employee Job Acceptance letters dated July 10, 2018 of Praveen Singh Solanki and Ramkrishan Lowanshi, and Employee Job Acceptance letters dated July 20, 2018 and August 01, 2018 of Sahil Kumar Mundra and Varun Sharma respectively, mention the place as Indore.

b) Noticee 2 in his statement dated December 03, 2019 accepted that the operations were running from '104, Gold Arcade, Opposite Curewell Hospital, New Palasia, Indore, Madhya Pradesh – 452 001'. The relevant extract of his statement is as follows:

Q. 6. Since when M/s. Fincap Research Investment Adviser is doing operations. Please provide the place of operation from where investment advisory services were offered?

Ans: M/s. Fincap Research Investment Adviser is in operations since June 2018. The investment advisory services were offered from 104, Gold Arcade, Opposite Curewell Hospital, New Palasia, Indore, Madhya Pradesh.

Q. 8. ...Since when you have opened the office at D-21, Gajraj Tower, Near Circuit House, Basant Vihar Colony, Bhilwara, where the SEBI Inspection team was advised to visit and do the inspection. Further, please inform what is the current status of your Indore office?

Ans. The office at D-21, Gajraj Tower, Near Circuit House, Basant Vihar Colony, Bhilwara was opened in August 2019. The office in Indore was closed for operations on November 30, 2019.

Q. 13 Please provide the landline numbers and mobile numbers used by you and employees/representatives of Fincap Research Investment Adviser for calling clients, with supporting documents.

Ans. Indore Land Line Number 0731-4028141 0731-4050984. 30-35 SIM cards and 25-30 mobiles were used in Indore for calling purpose. The SIM cards were taken in the name of employees and all the SIM card are Pre-paid Cards. All the SIMs are currently active and are used in Bhilwara also...."

c) Other employees of Fincap, Praveen Singh Solanki, Ramkrishan Lowanshi and Varun Sharma also stated in their statements that the place of business of Fincap was 104, Gold Arcade, Opposite Curewell Hospital, New Palasia, Indore, Madhya Pradesh – 452 001 during the period July, 2018 to November, 2019.

d) The landline connection (0731-4050984) on this address was taken from Airtel in the name of *Noticee 2* which was used for calling the clients.

50. Considering the above, I am unable to agree with the submissions of *Noticee 1* regarding the Indore office being used only for back-office operations. Facts such as the statements of employees of *Noticee 1* noted above, the usage of the landline and mobile numbers procured in Indore. Job Acceptance letters having address of Indore, etc. clearly show that the business of *Noticee 1* was carried out from Indore, which was not submitted to SEBI at the time of registration, nor was this change informed to SEBI. Therefore, I find that *Noticee 1* failed to inform about the change in registered address which is material information for a registered intermediary, and has, therefore, violated Regulation 13(b) and Clauses 1 and 8 of Code of Conduct as mentioned in Schedule III *read with* Regulation 15(9) of IA Regulations.
51. I also find that Ms. Sonika took registration from SEBI by providing false information and declaration to SEBI that Fincap would conduct its business from Bhilwara, Rajasthan. The same was disseminated on SEBI website for the information of general public. However, Fincap actually carried out its business from Indore, Madhya Pradesh and deceived the general public. I find that *Noticee 1* had deceived the general public and such act of misrepresentation / deception falls under the definition of “fraud” provided under Regulation 2(1)(c) of PFUTP Regulations.
52. Further, with regard to the submissions of the *Noticees* that Indore office operations were ceased immediately after the inspection as during inspection they were informed that they cannot function from more than one place of business, I note that the same is in contradiction to the statement of *Noticee 2* before Inspecting Authority, wherein he had stated that Indore office was closed for operations on November 30, 2019, i.e., prior to start of the inspection. However, as the said submission of the *Noticees* does not affect the charge against the *Noticees*, which has already been established in the preceding paragraphs, I find that the said submission does not merit any further consideration.

E. Continuation of operations of *Noticee 1* even after expiry of NISM certificates

53. It has been alleged that NISM Series X-A and Series X-B certificates of Ms. Sonika, as submitted with application, had expired on October 31, 2019, and she failed to renew NISM certificate.
54. *Noticee 1* in her reply to SCN has admitted that there has been a delay in renewal of NISM Certificates and requested that the delay be condoned. Further, in response to

queries raised during the hearing, it was submitted that the NISM Certificate of *Ms. Sonika* has expired and not renewed after October 31, 2019. From the above, I note that while the *Noticee* had earlier submitted that there has been a delay, there does not seem to be any intention to renew the NISM certificates as the same have not been renewed subsequent to the inspection or even subsequent to reply to SCN or the persona hearing.

55. In view of the above, I find that *Noticee 1* has violated Regulation 7(2) *read with* Regulation 15(13) of IA Regulations.

F. Submission of false information in pre-inspection questionnaire and during the inspection

56. It has been alleged that *Noticee 1* provided false information regarding number of clients and turnover in response to pre-inspection questionnaire to SEBI. Details of the same as provided in response to pre-inspection questionnaire and as provided during the inspection is given below:

Table - 4

Financial Year	<u>No. of clients</u> as stated in the email dated September 20, 2019 in response to pre-inspection questionnaire	<u>No. of clients</u> as per client master data obtained from IA during inspection by email dated December 03, 2019.
2018-19	262	441
2019- 2020 (Till Nov 30, 2019)	Not Provided	394

Table - 5

Financial Year	Revenue as stated in the email dated September 20, 2019 in response to pre-inspection questionnaire (in ₹)	Revenue as per client master data obtained from IA during inspection by email dated December 03, 2019. (in ₹)
FY 2018-19	35,00,201	72,89,011
FY 2019-20 (Till Nov 30, 2019)	Not Provided	85,64,579
Total	-	1,58,53,590

57. *Noticee 1* in reply to SCN has submitted that on reconciliation of data, it was observed that few records were left-out in the submission made in response to pre-inspection questionnaire, the same was rectified at later stage and the true information was provided at the time of inspection on December 3, 2019. The *Noticees* have further submitted that it would be, therefore, wrong to construe that the objective was to

mislead the Inspection team and to hide details regarding actual number of clients and amount of revenue generated by Fincap, from SEBI.

58. Further, in response to queries raised during the hearing, the *Noticees* have submitted the detail of revenue and clients for each year of operations:

Table - 6

Sr. No.	FY	No. of Unique Clients	Fee Collected (in ₹)
1	2018-19	196	98,00,000
2	2019-20	135	60,00,000
3	2020-21	74	34,50,000
4	2021-22	4	16,000
			1,92,66,000

59. I note from the above tables that on three different occasions, the *Noticees* have furnished three different sets of data on number of clients and turnover. Given the basic nature of such data pertaining to operations of an IA, such act of the *Noticees* raises a serious doubt on her conduct and operations. There is a *substantial difference* between the submissions of Noticee 1 in response to pre-inspection questionnaire and as provided during the inspection in terms of number of clients and turnover for FY 2018-19, as against *few records* claimed to have been left-out by the *Noticees*.
60. On account of the above, while I find that *Noticee 1* has violated Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III *read with* Regulation 15(9) of IA Regulations for not providing accurate information in response to the pre-inspection questionnaire, I also find that the above conduct of *Noticee 1* goes on to show that the *Noticee* tried to mislead SEBI by providing inconsistent information at different points of proceedings which falls under the definition of “fraud” provided under Regulation 2(1)(c) of PFUTP Regulations.

G. Risk Profiling Questionnaire

61. It has been alleged that there had been no uniformity followed by *Noticee 1* for Risk profiling (RPF). It has also been alleged that *Noticee 1* earmarked inappropriate weight as high as 25% of the total score to certain questions. It has also been alleged that certain questions appeared to be leading questions. It has been further alleged that risk averse investors, who would choose regular income, would be assigned higher risk points which had enabled *Noticee 1* to categorize them in ‘High Risk’ category, thus implying that *Noticee 1* misrepresented to the clients that products in the futures and options segments gave regular income.

62. In reply, *Noticee 1* submitted that "Draft Risk Profiling" form was submitted to SEBI along with application for registration and no objection was raised that time. It was believed that the RPF was duly assessed by SEBI, and *Noticee 1* has been using the same form for all its clients. With regard to using two RPFs, *Noticee 1* submitted that she had used the same form for most of the clients, however, there was a reset in weightage for better understanding of the client's profile due to which a new form with a higher score was created, and the questions of both the risk profile forms are the same.
63. From the material on record, I note from the RPF questionnaire for certain clients that 2 RPF questionnaires were used- one with maximum total score 480 and another with maximum total score 550. While the ones with maximum total score 480 are digitally signed and dated 26.03.2019 and 06.07.2019, the ones with maximum total score 550 are not digitally signed and are undated. Therefore, I am unable to accept the explanation provided by the *Noticee* that there was a reset in weights for better understanding of the client's profile due to which a new form with a higher score was created.
64. I note from the SCN the following details of products being provided to different risk category clients:

Table - 7

Group	SCORE	Type of Investor	Suitable SCORES	Risk Involved
A	0-160	Low Risk Appetite Investor	NA	
B	161-320	Medium Risk Appetite Investor	Cash based Services-Equity Cash	Principal is at risk, however the probability of total capital loss is limited or negligible unless leveraged
C	321 and more	High Risk Appetite Investor	Derivatives, Commodities and Forex Service	Principal is at risk and the entire capital can be lost in trade. Generally high risk is associated with High returns. You might get high returns but accept to bear high risk.

65. Further, I note from the RPF Questionnaire of Fincap that it includes following three questions to ascertain risk appetite of the clients:
- Would you invest where a small return is earned associated with small risk instead of a high return associated with high risk?*
 - When market is not performing well would you like to invest in more risky investment instead of less risky investment to earn high return?*

(iii) *High risk is associated with high return, Medium risk is associated with medium returns and low risk is associated with low returns? What risk can you bear (not prefer)?*

66. The RPF of the Noticee contained a total of 21 questions, but the total maximum weightage assigned to the aforesaid 3 questions was 120 out of 480 i.e. 25% of total weights. Therefore, I find that *Noticee 1* earmarked inappropriate weightage as high as 25% of the total score, for the aforesaid questions.
67. I also find the question (iii) noted above to be leading question as expression like “*High risk is associated with high return...*” would inevitably lead the client to respond that he can bear high risk as it is associated with high return. Instead, the question could have been framed to reflect that there are chances of high return or high loss.
68. I also note that the question of Investment Goal in the risk profile features three answer options, 1) Capital Appreciation, 2) Regular Income and 3) Capital Appreciation & Regular Income, and the weights assigned to such answers are 0, 40 and 20 respectively. Therefore, no weights are assigned if a client is interested in capital appreciation. A risk averse investor would choose regular income, as it is generally associated with debt products. However, as per the risk profiling methodology of *Noticee 1*, if an investor opts for ‘regular income’, he would be assigned 40 points. Assigning higher points to an investor would enable *Noticee 1* to categorize a client in ‘High Risk’ category for whom *Noticee 1* can sell advices in all products including products in the Derivatives, Commodities and Forex Services. Thus, I note that the RPF of Fincap incorrectly assigns higher risk points to investors interested in regular income, and they may in turn be sold advices in high risk products like derivatives.
69. The contention of the *Noticees* that the RPF was submitted to SEBI during registration and SEBI did not raise any objection is not acceptable as the onus of compliance with the regulatory requirements lies with the intermediaries. Just because a document was submitted to SEBI along with the registration application and no objection was raised by SEBI does not give any excuse to intermediaries for non-compliance with regulations.
70. In view of the above, I find that *Noticee 1* has violated Regulation 16(b)(iii), Regulation 16(d)(i) and (ii) of IA Regulations.

H. Non-availability of supporting documents for risk profiling

71. It has been alleged that *Noticee 1* had not obtained any supporting documents/evidence from clients while doing risk profiling of clients and the same was being done merely on the basis of telephonic conversation with clients and information extracted from Central KYC. It has also been alleged that *Noticee 1* failed to provide the telephonic records citing that it does not have any infrastructure to maintain record of telephone conversations with clients.
72. *Noticee 1* has submitted that she checked KYC of the clients through registered KRAs for all clients, however, she has not kept records of telephonic conversations with clients, as it was not mandated by SEBI either in Regulations or by way of circular/notifications. Therefore, merely in the absence of call recordings which was not mandatory erstwhile it is wrong to say that appropriate supporting documents for risk profiling has not been obtained and maintained by *Noticee 1*.
73. I note from the KRA data of four clients, viz. Rahul Yadav, Humesh Kumar, Manas Chandra, and Nilesh Shelke, that *Noticee 1* took into consideration the data fetched from KRA agencies even though the same was not verified by KRA and the status was shown as “submitted”. Therefore, as per KRA data, the KYC process was not complete and cannot be relied upon. I further note from the KRA data of two clients, viz. Amrik Singh Bains and Amit Ashok Mandavkar that data fetched from KRA relates to the year 2011 and 2015 respectively. The IA did not collect any documents to ascertain current income and other details for doing risk profile at the time of on-boarding the clients in the year 2019.
74. I note that the KYC information provides only basic data like personal details, address, contact details, income details, net worth, occupation details and date of CKYC. For arriving at risk profiling of any clients, details like investment objectives, existing investments/ assets, risk appetite/ tolerance, liabilities/ borrowing details, prior experience in market, etc. are required.
75. I note that as per regulation 19 (1) and (2) of IA Regulations, IA shall, *inter alia*, maintain following records either in physical or electronic form for a minimum period of 5 years:
- a) KYC records of clients
 - b) Risk profiling and risk assessment of clients
 - c) Suitability assessment of the advice being provided

76. In view of the above, I am unable to accept the submission of *Noticee 1* in this regard, and find that *Noticee 1* has violated the provisions of Regulation 19 (1) and 19 (2) of IA Regulations.

I. Non-communication of Risk Profile and suitability assessment to clients and starting investment advisory services without confirmation of client on Risk Profile

77. It has been observed in the SCN that subsequent to Risk profile and suitability assessment, *Noticee 1* used to send welcome email to clients forwarding Risk assessment, suitability assessment and invoice for the amount received. It was mentioned in the welcome email that, *"The information provided by you and we will consider it final and acceptable from your side. Kindly send your acceptance within 72 hours so that we can provide best services as per your risk appetite."*

78. It has been alleged in the SCN that *Noticee 1* failed to produce any documentary evidence of confirmation received from the clients for the Risk profile and suitability assessment form in respect of 40 sample clients selected for examination. It has also been observed that Risk profile and suitability assessment sent to the clients (around March 2019 or April 2019, when IA had obtained digital signature) had not been signed and dated by *Noticee 1*.

79. *Noticee 1* denied the allegations and submitted that it has communicated both documents (Risk Profile and Suitability Assessment) to the clients via email.

80. I note that as per Regulation 16(e) of IA Regulations, IA shall, *inter alia*, ensure that risk profile of the client is communicated to the client after risk assessment is done. I also note that SEBI Circular dated December 27, 2019, which came into effect from January 01, 2020, *inter alia*, directs IAs to provide investment advice only after completing the following steps:

- a) Complete the risk profile of the client based on information provided by the client.
- b) Obtain consent of the client on completed risk profile either through registered email or physical document.

81. I note that in this case, the allegation is of failure of *Noticee 1* to produce any documentary evidence of confirmation received from the clients for the Risk profile and suitability assessment form. While *Noticee 1*'s welcome email itself seeks acceptance of clients, I understand that the requirement of said confirmation from clients has not been expressly specified in Regulation 16(e) of IA Regulations, and

the same was expressly specified only after the inspection period vide the said Circular dated December 27, 2019.

82. In view of the above, while I find that, as a matter of prudent practice, *Noticee 1* should have obtained and produced confirmation from clients for the Risk profile and suitability assessment form, I am inclined to take a lenient view in this regard. Therefore, I do not find that *Noticee 1* has violated Regulation 16(e) of IA Regulations.

J. Advisory Services Offered Prior to Risk Profiling

83. It has been alleged that in certain cases, prior to the risk profile of the client, *Noticee 1* sold investment advisory services and charged huge amount of fees before the completion of risk profiling of the clients. It has also been alleged that in some cases, service tenure start date was before the date of risk profile of client.
84. *Noticee 1* in reply to SCN has submitted that prior to providing the IA services, she did proper KYC, Risk Profiling and Suitability Assessment of the clients, and thereafter, only suitable services would be sold to the client. *Noticee 1*, however, has not submitted any evidence to substantiate this claim. It has also been submitted that none of the client had disputed the risk profiling and suitability assessment done by the *Noticee 1*.
85. Further, in response to queries raised during the hearing, *Noticee 1* submitted that there may be instances where the clients have paid prior to risk profiling, however, services have only been started after preparing and communicating risk profile and suitability assessment of the clients and the same has never been disputed by the clients. The first payment collected from the client was usually towards registration charges which was adjusted to the fees of services which was offered to him during after due risk profiling.
86. I note from the SCN the following details regarding the date of payment of fees, the services tenure date, date of carrying out risk profiling, etc. with respect to the 40 clients selected on sample basis during inspection: -

Table - 8

Sl. No.	Name	First Date of Payment made by Client	Dates of Risk Profiling	Services Tenure Start Date	Date of Invoice	Amount of Fees paid (₹.)
1	Abhay Kumar	29-Mar-2019	03-Apr-2019	04-Apr-2019	03-Apr-2019	3000

Sl. No.	Name	First Date of Payment made by Client	Dates of Risk Profiling	Services Tenure Start Date	Date of Invoice	Amount of Fees paid (₹.)
2	Akshat Vinit Shah (Vinit Kumar)	06-Sep-2019	06-Sep-2019	07-Sep-2019	06-Sep-2019	20000
3	Amey Ramchandra Pujari	25-June-2019	27-June-2019	28-June-2019	27-June-2019	11000
4	Amit Ashok Mandavkar	04-July-2019	06-July-2019	08-July-2019	06-July-2019	15000
5	Amrik Singh Bains	30-Mar-2019	03-Apr-2019	04-Apr-2019	03-Apr-2019	15000
6	Arvind Kumar	30-Mar-2019	09-Apr-2019	10-Apr-2019	09-Apr-2019	63000
7	Ashok Kumar Babel	14-May-2019	15-May-2019	16-May-2019	15-May-2019	40101
8	Atul tanwar	Details Not provided by IA				15000
9	Bajinath Sahu	06-Aug-2019	08-Aug-2019	09-Aug-2019	08-Aug-2019	3500
10	Bibek Ranjan Garnaik	01-Apr-2019	04-Apr-2019	05-Apr-2019	04-Apr-2019	15000
11	Divyarajsinh B Zala	19-Sep-2019	23-Sep-2019	20-Sep-2019	23-Sep-2019	17700
12	Duradundhi	14-Aug-2018	27-Sep-2018	16-Aug-2018	15-Aug-2018	51000
13	Humesh Kumar	31-May-2019	31-May-2019	03-June-2019	31-May-2019	5900
14	Imran Khan	22-Apr-2019	23-Apr-2019	24-Apr-2019	23-Apr-2019	11000
15	Joy Daniel Wani	27-Sep-2019	30-Sep-2019	01-Oct-2019	30-Sep-2019	33630
16	Lila Ram	21-Feb.-2019	21-Feb-2019	22-Feb-2019	21-Feb-2019	3500
17	Mahesh Balaji Thombare	04-Jan-2019	04-Jan-2019	07-Jan-2019	04-Jan-2019	2000
18	Manas Chandra	22-Oct-2019	23-Oct-2019	24-Oct-2019	23-Oct-2019	5900
19	MANISH KURDEKAR	Details not Provided by IA				16500
20	Manohar Lal Godara	18-July-2019	19-July-2019	22-July-2019	19-July-2019	15000
21	Manoj Gusain	19-Dec-2018	22-Dec-2018	24-Dec-2018	22-Dec-2018	5000
22	Manoj Kumar	02-July-2019	03-July-2019	03-July-2019	03-July-2019	175000
23	Mohammad Ahsan	07-Jan-2019	08-Jan-2019	09-Jan-2019	08-Jan-2019	5500
24	Mudir	11-Feb-2019	13-Feb-2019	14-Feb-2019	13-Feb-2019	25000
25	Narasimma Rao	26-Aug-2019	27-Aug-2019	28-Aug-2019	27-Aug-2019	11800
26	Nilesh Shelke	13-Nov-2018	14-Nov-2018	15-Nov-2018	14-Nov-2018	16000
27	Peter C G	22-Oct-2018	23-Oct-2018	23-Oct-2018	23-Oct-2018	40000

Sl. No.	Name	First Date of Payment made by Client	Dates of Risk Profiling	Services Tenure Start Date	Date of Invoice	Amount of Fees paid (₹.)
28	Prakash Yadav Bhange	19-Sep-2019	23-Sep-2019	24-Sep-2019	23-Sep-2019	5900
29	Prashant Sandipan Bhil	29-Jan-2019	31-Jan-2019	01-Feb-2019	31-01-2019	60000
30	Priya Ranjan Roy	30-Oct-2018	31-Oct-2018	01-Nov-2018	31-Oct-2018	18000
31	Rahul Yadav	02-May-2019	03-May-2019	06-May-2019	03-May-2019	95000
32	Rakesh Kumar Singhal	02-Nov-2018	03-Nov-2018	05-Nov-2018	03-Nov-2018	6000
33	Rishi Kumar	28-Feb-2019	01-Mar-2019	04-Mar-2019	01-Mar-2019	3000
34	Rupak Rai	06-Aug-2018	06-Aug-2018	06-Aug-2019	04-Sep-2018	10000
35	Satish Devidas Satkar	31-July-2019	02-Aug-2019	02-Aug-2019	02-Aug-2019	95000
36	Saurabh Kumar Gupta	28-Mar-2019	30-Mar-2019	01-Apr-2019	30-Mar-2019	5000
37	Shanaker Singh Mourya	23-Oct-2019	24-Oct-2019	25-Oct-2019	24-Oct-2019	25016
38	Syed Azmath Ali	03-Aug-2018	01-Sep-2018	06-Aug-2018	01-Sep-2018	5000
39	Yagnesh Rawal	08-Oct-2018	12-Oct-2018	08-Oct-2018	12-Oct-2018	11000
40	Yatharth Kochhar	25-Dec-2018	27-Dec-2018	28-Dec-2018	27-Dec-2018	15000
	Total					994,947

87. As per Regulation 17(a) of IA Regulations, IA has to ensure that all investments on which investment advice is provided are appropriate to the risk profile of the client. From the above table, I note the following:

- Out of 40 clients, Fincap failed to provide data in respect of 2 clients (Sl.No. 8 & 19) regarding date of first payment made, date of carrying out risk profiling, etc.
- In case of 33 clients, Fincap had sold advisory products and collected fees even before it had carried out the risk profile of the clients.
- Out of the 33 clients, in case of 4 clients namely Divyarajsingh B Zala, Duradundhi, Syed Azmath Ali and Yagnesh Rawal, the service tenure start date is before date of risk profile of client (emboldened in the above table).
- Further, out of the 4 clients, risk profile was carried out after 42 days and 26 days of start of service tenure for clients Duradundhi and Syed Azmath Ali, respectively.

88. Thus, I find that the claim of *Noticee 1* that there may be instances where the clients have paid prior to risk profiling, *but services have only been started after preparing and communicating risk profile and suitability assessment of the clients*, is in contradiction to the facts recorded in above paragraph. *Noticee 1* has also claimed that the first payment collected from the client was usually registration charges which was adjusted to the fees of services offered to him after due risk profiling. As understood, in common business parlance, registration charges would generally be standard amounts uniform for all clients. However, I note from the above Table that the amounts of fees paid are neither standardized nor uniform across clients. Further, the contention of the *Noticee* that none of the clients had disputed the risk profiling and suitability assessment does not support *Noticee 1*'s case since instances of selling of advisory services, collection of fees and even start of service tenure before risk profiling of clients have been observed in the present case.
89. In view of the above, I find that *Noticee 1* has violated Regulation 17(a) and Clauses 1, 2 and 4 of Code of Conduct as mentioned in Schedule III *read with* Regulation 15(9) of IA Regulations. The above conduct of *Noticee 1* exhibits lack of honesty and fairness in her operations which is covered within the definition of "fraud" provided under Regulation 2(1)(c) of PFUTP Regulations.

K. Suitability Assessment

(I) High fees product sold to client without considering Annual Income of Client and Proposed Investment Value:

90. It has been alleged that *Noticee 1* had charged disproportionate/ unreasonable fees/ charges towards its services in comparison to client's assets/ investment amount, loss absorbing capacity and financial strength and sold products without taking into consideration the investment goal or age of the client and incorrectly classified certain clients as HNIs. It has further been alleged that *Noticee 1* suggested products in disregard to the risk profile of the client and did not follow the requirement of suitability advice to its clients and kept its own interest ahead of his clients' interest and failed to take due care and do due diligence to ascertain risk profile of the client and to offer him suitable advice.
91. *Noticee 1* submitted that the fee charged to clients were mentioned on *Noticee 1* / Fincap's website, and the clients have agreed to pay and avail services of their choice within their risk appetite.

92. I note that during the inspection, suitability of investment advice provided by *Noticee 1* has been analyzed after taking into account the products / services sold to the 40 sample clients. I note that the SCN lists out instances of 16 clients, where *Noticee 1* has failed to take into consideration the gross annual income, the proposed investment amount, investment objective, etc. of clients while offering services to them and charging fees. Detailed findings with respect to 2 clients (out of the aforesaid 16 clients) are as under:

- i. Amrik Singh Bains: The details regarding the amount of fees collected by Fincap from client are given below: -

Table - 9

Invoice date	Payment date	Duration of the service		Service offered	Amount paid (in ₹)
		Service from	Service to		
03-Apr-2019	30-Mar-2019	04-Apr-2019	03-May-2019	Stock future (Intraday/Delivery)	15000
09-Apr-2019	06-Apr-2019	04-May-2019	03-June-2019	Stock future (Intraday/Delivery)	15000
12-Apr-2019	09-Apr-2019	12-Apr-2019	30-Jul-2019	HNI Stock Future(Intraday/Delivery)	135000
02-May-2019	29-Apr-2019	01-Aug-2019	10-Feb-2020	HNI Stock Future(Intraday/Delivery)	205000
Total					3,70,000

As per the risk profile of client, the *proposed investment amount by the client was less than ₹. 1 Lakh and his gross annual income was between ₹. 1 lakh and ₹. 5 lakhs*. Market value of portfolio (as given in Risk Profile form) was less than ₹.1 lakh. From the above, the following is observed:

- Even assuming client's annual income to be on higher side as ₹. 5 lakh, monthly income comes out to be approx. ₹. 41,666/- and thus, the client cannot be classified as HNI.
- Noticee 1* has sold HNI Stock Future service to the client.
- Noticee 1* has charged ₹. 3,70,000/- towards advisory fees which is exorbitant taking into account the annual income (₹. 1 to 5 Lac) and the investment amount (less than ₹.1 lakh).

- ii. Amit Ashok Mandavkar: The details of the fees charged from the client are given below:

Table - 10

Invoice date	Payment date	Duration of the service		Service offered	Amount paid (in ₹)
		Service from	Service to		
06-Jul-2019	04-Jul-2019	08-Jul-2019	07-Aug-2019	Stock cash(Intraday/Delivery)	15000
09-Jul-2019	06-Jul-2019	10-Jul-2019	15-Aug-2019	All Equity Combo (Intraday / Delivery)	15000
18-Jul-2019	17-Jul-2019	08-Aug-2019	31-Oct-2019	Stock cash(Intraday/Delivery)	25000
20-Jul-2019	19-Jul-2019	01-Nov-2019	28-Feb-2020	Stock Cash (Intraday / Delivery)	40000
01-Aug-2019	31-Jul-2019	01-Mar-2020	15-Jun-2020	Stock Cash (Intraday / Delivery)	35000
12-Sep-2019	06-Sep-2019	07-Sep-2019	04-Dec-2020	All Equity Combo Pack	47200
Total					1,77,200

As per risk profile carried out by Noticee 1 on July 06, 2019 and July 09, 2019, *the proposed investment amount of the client was less than ₹. 1 lakh and gross annual income of the client was below ₹. 1 lakh.* It is observed that Noticee 1 has charged ₹.1,77,200/- as advisory fees from the client whose annual income is below ₹ 1 lakh.

93. 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.

94. 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.
95. I am, therefore, unable to accept the contention of the *Noticees* that the fee charged to clients are mentioned on Noticee 1/ Fincap's website and the clients have agreed to pay and avail services of their choice.
96. In view of the above, I find that *Noticee 1* has violated Regulations 15(1), 17(a), 17(d), 17(e) and Clauses 1, 2 and 6 of Code of Conduct as mentioned in Schedule III *read with* Regulation 15(9) of IA Regulations. I also find that this conduct of the *Noticee 1* falls under act of fraud as defined under Regulation 2(1)(c) of PFUTP Regulations.

(II) Revision of Risk Profiles within short period with illogical changes in response to the questions to sell unsuitable high risk products to clients:

97. It has been alleged in the SCN that Risk Profiles of clients were revised within short period (in some cases within 3 days) with illogical changes in the response to the questions to sell unsuitable high risk products to clients.
98. In this regard, I note that the SCN lists out instances of following five clients.

Table – 11

Sr.No	Name of client	Dated of 1 st Risk profile	Date of 2 nd Risk profile
1.	Amit Ashok Mandavkar	06/07/2019	09/07/2019
2.	Divyarajsingh B Zala	23/09/2019	26/09/2019
3.	Mahesh Balaji Thombare	04/01/2019	22/01/2019
4.	Rakesh Kumar Singhal	03/11/2018	21/03/2018
5.	Saurabh Kumar Gupta	30/03/2019	14/04/2019

99. Detailed findings with respect to two clients are as under:

i. Amit Ashok Mandavkar:

Noticee 1 had carried out risk profiling of the client Amit Ashok Mandavkar on July 06, 2019 and again on July 09, 2019 i.e. within 3 days from the earlier risk profiling.

The discrepancies observed in the two risk profiles are given below: -

Table - 12

Q. No.	Question	Risk profile dated July 06, 2019		Risk profile dated July 09, 2019	
		Answer in risk profiling	Scores assigned	Answer in risk profiling	Scores assigned
7	Investment Experience	Less than 3 years	0	3-5 years	10
8	Would you invest where a small return is earned associated with small risk instead of a high return associated with high risk?	Strongly prefer	0	Do not prefer	30
9	When market is not performing well would you like to invest in riskier investment instead of less risky investment to earn high return?	Indifferent	20	Strongly prefer	40
10	High risk is associated with high return, Medium risk is associated with medium returns and low risk is associated with low returns? What risk can you bear (not prefer)?	Medium	20	High	40
17	What is the size of your emergency fund?	1-3 months' income	10	>6 months income	30
18	What is your experience with investments in past?	Moderate	20	Very good	40
19	What percentage of monthly income is allocated to pay off debt [all EMIs]?	Between 0% -20%	30	None	40
	Total risk of profile SCORES	200		330	
	Risk Category	Medium		High	

From the above table, it was observed that the responses to questions in the risk profiles underwent significant change, even though both the risk profiles had been carried out within a gap of 3 days. *Noticee 1* failed to provide any documents w.r.t. communication sent to client for revised risk assessment as well as revised suitability assessment and communication of invoices to client.

ii. Divyarajsingh B Zala:

Noticee 1 had done risk profiling of the client on September 23, 2019 and again on September 26, 2019 i.e. within 3 days from the earlier risk profiling. The discrepancies observed in the two risk profiles are given below: -

Table – 13

Q. No.	Question	Risk profile dated September 23, 2019		Risk profile dated September 26, 2019	
		Answer in risk profiling	SCORES assigned	Answer in risk profiling	SCORES assigned
2	Investment Goal	Capital appreciation and Regular Income	20	Regular Income	40
3	Proposed Investment Amount	< 1 lacs	0	1-2 lacs	10
8	Would you invest where a small return is earned associated with small risk instead of a high return associated with high risk?	Strongly prefer	0	Indifferent	20
9	When market is not performing well would you like to invest in riskier investment instead of less risky investment to earn high return?	Indifferent	20	Indifferent	20
10	High risk is associated with high return, Medium risk is associated with medium returns and low risk is associated with low returns? What risk can you bear (not prefer)?	Medium	20	High	40
17	What is the size of your emergency fund?	3-6 months' income	20	>6 months income	30
18	What is your experience with investments in past?	Moderate	20	Very good	40
	Total risk of profile SCORES	220		330	
	Risk Category	Medium		High	

100. It is observed from the above table that responses to questions in the risk profiles underwent significant change, even though both the risk profiles had been carried out within a gap of 3 days. I also note that in case of 4 out of the aforesaid 5 clients, risk category was revised from 'medium' to 'high'.

101. *Noticee 1* in reply submitted that there are no such cases in observation where *Noticee 1* has made changes in the risk profiling leading to substantial change in the Risk Appetite of the client. Further, no client has disputed the risk assessment done, and any observation by Inspection Team leading to contrary finding may be mere exception to the majority of cases. Further, in response to queries raised during the hearing, *Noticee 1* submitted that only 4 cases have emerged where changes in risk

profile form leading to substantial change in risk classification have occurred, however the clients have not disputed the risk profile and availed their services without any grievances.

102. In this regard, it is pertinent to mention that 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. Post-verification by the IA, the risk profile becomes the basis for advising suitable products to the client. Risk profiling once completed would ideally remain unchanged unless the client brings forth new factors, which may have an impact on the same. An IA, by frequently revising the risk profiles of clients would undermine the entire purpose of risk profiling and ensuring suitability of products to the clients as detailed in regulations 16 and 17 of the IA Regulations. Revision of risk profile affects the very basis of suitability assessment which coupled with risk assessment is the foundation of investment advisory envisaged under the IA Regulations.

103. Further, I note that the *Noticees* have also admitted to the aforesaid allegations but have prayed that the error may be condoned. In this regard, it is noted that consistency and uniformity in risk profiling ensures that the IA is able to advise suitable products to its clients. In the present case, out of the sample analysis, it emerged that in 4 cases changes in risk profile form lead to substantial change in risk classification, and the same has been admitted by *Noticee* 1. As discussed in preceding paragraphs, the aforesaid error affects the very foundation of investment advisory envisaged under the IA Regulations, and therefore, the same cannot be condoned. At the same time, the said act of revising the risk category of clients from “medium” to “high” within a short span, appears to be aimed at maximizing the fee (to be charged from the clients for high risk products) and is covered within the definition of “fraud” provided under Regulation 2(1)(c) of PFUTP Regulations.

L. Selling of services/ products in dubious manner with unethical intent and unfair and unreasonable advisory/service fee charged from the client

104. It has been alleged that *Noticee* 1 / Fincap did not have any products/services designed by its own, rather the same were copied from another IA namely “Epic”. The same was identified from the product write up provided by *Noticee* 1, wherein Ultradynamic MCX Services were described as “...*The movement in MCX is dependent on Comex market (US Commodity exchange). Epic has own research*”

team present in US (East Coast). The US team generates the commodity trading levels and passes it on to an Epic Moderator....”

105. It has been further observed that *Noticee 1* was offering 22 different types of products/ services in Equity, futures and options and commodity segments. 11 out of 22 products/services are such where monthly advisory charges are equal to or more than ₹ 25,000. Further, service charges for some products were as high as ₹ 1,35,000 per month. Most of the products/ services were in the nature of providing tips for intraday trading.

106. It has also been observed that some of the products provided features of telephonic support by *Noticee 1*. However, when telephonic records for such advices were sought, *Noticee 1* informed that it does not maintain telephone records for such advices. The same was later accepted by *Noticee 2* in his statement dated December 03, 2019 before the Inspecting Authority. The relevant extract of same is as follows:

“Q. 26: Please provide Call Records for Inspection Period.

Ans. No call records are maintained.

Q. 30 Please provide SMS Log, Performance Track Records and Call Data records for following days

a. January 17, 2019

b. April 08, 2019

c. June 12, 2019

Ans. No such data is available with me. No such data is maintained.”

107. It has also been alleged that in most of the products, *Noticee 1* was giving assured returns claims in the details of products to clients such as *“Our clients earn minimum profit of ₹. 3,000 to ₹. 3,500 and maximum ₹. 6,000 to 7,000 on intraday basis on per lot”*. Further, in order to gain confidence of the client they had also stated in their Basic Stock Future product that *“Huge profits are earned every month. Accuracy level is maintained to 90-95%”*.

108. *Noticee 1* in her reply has submitted that *Noticee 1* has provided services to client based on risk profile and suitability assessment, and that the Fees charged by Fincap is agreed by client and no unfair means are applied to collect fees from the client. She also submitted that the client in some cases opt for various services and only after their consent these services are given to them.

109. Further, in response to queries raised during the hearing, *Noticee 1* denied the allegation with respect to assured profit/unrealistic returns. It was submitted that the information published on the website is purely a marketing gimmick, and the features

mentioned on the website are only for information purpose and in no way, they have assured or guaranteed any return on the website. It was further submitted that in the welcome mail given to each client it is clearly mentioned that- '*Stock market has inherent market risk, hence we do not claim any profit guaranteed services*', and thereby, each client was made aware about the risk associated with securities market before services were commenced.

110. In relation to the above arguments of *Noticee 1*, I find it important to mention that the website of the IA acts as the interface between the IA and its prospective clients. The IA cannot recklessly put claim or information on its website which is not true and is intended to be only a marketing gimmick aimed at luring clients. In fact, in the present case, it is noted from the list of services that charges for some services were as high as ₹ 1,35,000 per month. Further, I have already concluded above that *Noticee 1* charged disproportionate/ unreasonable fees/ charges towards its services in comparison to client's income/ investment amount, loss absorbing capacity and financial strength. In addition to the above, *Noticee 1* did not even verify the content on her website and recklessly copied information from other IA's website. In view of the above, I am unable to accept the contention of *Noticee 1* in this regard.

111. In view of the above, I hold that *Noticee 1* has failed to abide by Clauses 1 and 2 of Code of Conduct for IAs as provided in Third Schedule of IA Regulations *read with* Regulation 15(9) of IA Regulations. Further, the act of the *Noticee 1* of making false claims regarding assured returns falls under act of "fraud" as defined under Regulation 2(1)(c) of PFUTP Regulations.

M. Charging Advisory fees before expiry of tenure of existing service/Collecting multiple payments in short period

112. It has been alleged that *Noticee 1* had been selling same advisory products/services to the clients before completion of the tenure of the previous service. It has also been observed that one client had been charged multiple times for one single service even before expiry of that service. Further, in some cases, it has been observed that in a short span of one month, more than 5 invoices were raised by *Noticee 1* and huge payments were taken from the clients. The detailed client-wise analysis is placed below:

Table - 14

Payment Date	Name	Service Name	Tenure Start date	Tenure End date	Paid Amount (in ₹)
2-Jul-19	Amey Ramchandra Pujari	Premium Stock Cash	3-Jul-19	30-Sep-19	60000

Payment Date	Name	Service Name	Tenure Start date	Tenure End date	Paid Amount (in ₹)
25-Jun-19	Amey Ramchandra Pujari	Stock Cash	28-Jun-19	27-Jul-19	11000
26-Sep-19	Amey Ramchandra Pujari	Stock Cash	1-Oct-19	1-Mar-20	23600
	Amey Ramchandra Pujari Total				94600
6-Jul-19	Amit Ashok Mandavkar	all equity	10-Jul-19	15-Aug-19	15000
6-Sep-19	Amit Ashok Mandavkar	all equity	7-Sep-19	4-Dec-19	47200
4-Jul-19	Amit Ashok Mandavkar	Stock Cash	8-Jul-19	7-Aug-19	15000
17-Jul-19	Amit Ashok Mandavkar	Stock Cash	8-Aug-19	31-Oct-19	25000
19-Jul-19	Amit Ashok Mandavkar	Stock Cash	1-Nov-19	28-Feb-20	40000
31-Jul-19	Amit Ashok Mandavkar	Stock Cash	1-Mar-20	15-Jun-20	35000
	Amit Ashok Mandavkar Total				177200
6-Apr-19	Amrik Singh Bains	HNI Stock Future	4-May-19	3-Jun-19	15000
30-Mar-19	Amrik Singh Bains	Stock Future	4-Apr-19	3-May-19	15000
9-Apr-19	Amrik Singh Bains	Stock Future	12-Apr-19	30-Jul-19	135000
29-Apr-19	Amrik Singh Bains	Stock Future	1-Aug-19	10-Feb-20	205000
	Amrik Singh Bains Total				370000
10-Apr-19	Arvind Kumar	all equity	12-Apr-19	11-Apr-20	25000
11-Apr-19	Arvind Kumar	all equity	1-Apr-19	31-Mar-20	11000
30-Mar-19	Arvind Kumar	MCX Service	10-Apr-19	9-Apr-20	63000
17-Apr-19	Arvind Kumar	Premium All Equity	1-May-19	30-Apr-20	60000
30-Apr-19	Arvind Kumar	Premium All Equity	1-May-19	30-Apr-20	61000
6-May-19	Arvind Kumar	Premium All Equity	1-May-19	30-Apr-20	25000
	Arvind Kumar Total				245000
31-May-19	Ashok Kumar Babel	Premium Stock Future	4-Jun-19	3-Aug-19	65000
14-May-19	Ashok Kumar Babel	Stock Future	16-May-19	16-Aug-19	40101
16-May-19	Ashok Kumar Babel	Stock Future	17-Aug-19	6-Oct-19	30000
25-May-19	Ashok Kumar Babel	Stock Future	7-Oct-19	31-Dec-19	35000
	Ashok Kumar Babel Total				170101
6-Aug-19	Baijnath Sahu	HNI Stock Cash	9-Aug-19	24-Sep-19	3500
7-Aug-19	Baijnath Sahu	HNI Stock Cash	9-Aug-19	24-Sep-19	55000
8-Aug-19	Baijnath Sahu	HNI Stock Cash	25-Sep-19	14-Nov-19	55000
	Baijnath Sahu Total				113500
1-Apr-19	Bibek Ranjan Garnaik	all equity	5-Apr-19	24-May-19	15000
3-Apr-19	Bibek Ranjan Garnaik	all equity	5-Apr-19	24-May-19	25000
10-Apr-19	Bibek Ranjan Garnaik	all equity	25-May-19	4-Jun-19	11000
24-Apr-19	Bibek Ranjan Garnaik	all equity	7-Jun-19	10-Aug-19	25000

Payment Date	Name	Service Name	Tenure Start date	Tenure End date	Paid Amount (in ₹)
25-Apr-19	Bibek Ranjan Garnaik	all equity	7-Jun-19	10-Aug-19	25000
	Bibek Ranjan Garnaik Total				101000
24-Sep-19	Divyarajsinh B Zala	Premium All Equity	25-Sep-19	21-Oct-19	50150
25-Sep-19	Divyarajsinh B Zala	Premium All Equity	22-Oct-19	5-Dec-19	82600
19-Sep-19	Divyarajsinh B Zala	Stock Cash	20-Sep-19	21-Oct-19	17700
	Divyarajsinh B Zala Total				150450
14-Aug-18	Duradundhi	HNI Stock Option	16-Aug-18	15-Sep-18	51000
27-Aug-18	Duradundhi	HNI Stock Option	28-Aug-18	26-Sep-18	35000
26-Sep-18	Duradundhi	HNI Stock Option	27-Sep-18	10-Nov-18	25000
30-Apr-19	Duradundhi	stock option	3-May-19	22-May-19	5000
	Duradundhi Total				116000
31-May-19	Humesh Kumar	Stock Cash	3-Jun-19	15-Jun-19	5900
1-Jun-19	Humesh Kumar	Stock Cash	6-Jun-19	30-Sep-19	11500
3-Jun-19	Humesh Kumar	Stock Cash	6-Jun-19	30-Sep-19	22600
7-Jun-19	Humesh Kumar	Stock Future	11-Jun-19	30-Oct-19	55000
	Humesh Kumar Total				95000
30-Apr-19	Imran Khan	HNI Stock Option	3-May-19	30-Aug-19	33000
26-Jun-19	Imran Khan	HNI Stock Option	1-Sep-19	30-Jan-20	50000
5-Jul-19	Imran Khan	HNI Stock Option	10-Jul-19	31-Jul-19	75000
14-May-19	Imran Khan	Index Option	15-May-19	14-Jun-19	5000
22-Apr-19	Imran Khan	Stock Future	24-Apr-19	23-Jun-19	11000
24-Apr-19	Imran Khan	Stock Future	24-Jun-19	23-Jul-19	15000
	Imran Khan Total				189000
3-Oct-19	Joy Daniel Wani	Premium MCX Combo	7-Oct-19	26-Oct-19	35001
27-Sep-19	Joy Daniel Wani	Premium MCX ENERGY	1-Oct-19	20-Nov-19	33630
30-Sep-19	Joy Daniel Wani	Premium MCX ENERGY	21-Nov-19	25-Dec-19	22000
	Joy Daniel Wani Total				90631
21-Feb-19	Lila Ram	Stock Cash	22-Feb-19	28-Feb-19	3500
25-Feb-19	Lila Ram	Stock Cash	1-Mar-19	1-Mar-19	5000

Payment Date	Name	Service Name	Tenure Start date	Tenure End date	Paid Amount (in ₹)
27-Feb-19	Lila Ram	Stock Cash	12-Mar-19	26-Mar-19	6500
6-Apr-19	Lila Ram	Stock Cash	8-Apr-19	12-Apr-19	2000
	Lila Ram Total				17000
8-Jan-19	Mahesh Balaji Thombare	HNI Stock Cash	11-Jan-19	25-Feb-19	30000
10-Jan-19	Mahesh Balaji Thombare	HNI Stock Cash	26-Feb-19	4-Mar-19	20000
18-Jan-19	Mahesh Balaji Thombare	HNI Stock Cash	5-Mar-19	12-Mar-19	20000
4-Jan-19	Mahesh Balaji Thombare	Stock Cash	7-Jan-19	6-Feb-19	2000
22-Jan-19	Mahesh Balaji Thombare	Stock Future	23-Jan-19	22-Feb-19	10000
	Mahesh Balaji Thombare Total				82000
31-Jul-19	Manohar Lal Godara	HNI Stock Cash	2-Aug-19	15-Jan-20	133000
18-Jul-19	Manohar Lal Godara	Stock Cash	22-Jul-19	21-Aug-19	15000
	Manohar Lal Godara Total				148000
4-Jan-19	Manoj Gusain	HNI Stock Future	7-Jan-19	6-Mar-19	15000
7-Jan-19	Manoj Gusain	HNI Stock Future	7-Mar-19	22-Apr-19	20000
9-Jan-19	Manoj Gusain	HNI Stock Future	7-Mar-19	22-Apr-19	30000
19-Dec-18	Manoj Gusain	Stock Cash	24-Dec-18	23-Jan-19	5000
20-Dec-18	Manoj Gusain	Stock Cash	24-Dec-18	23-Jan-19	5000
24-Dec-18	Manoj Gusain	Stock Cash	24-Jan-19	9-Feb-19	5000
	Manoj Gusain Total				80000
2-Jul-19	Manoj Kumar	Stock cash, Stock Option & Stock Future	3-Jul-19	3-Oct-19	175000
	Manoj Kumar Total				175000
7-Jan-19	Mohammad Ahsan	Premium Stock Cash	9-Jan-19	15-Jan-19	5500
10-Jan-19	Mohammad Ahsan	Premium Stock Cash	14-Jan-19	18-Jan-19	4500
	Mohammad Ahsan Total				10000
11-Feb-19	Mudir	Platinum Stock Cash	14-Feb-19	14-Apr-19	25000
12-Feb-19	Mudir	Platinum Stock Cash	14-Feb-19	14-Apr-19	61000
	Mudir Total				86000
26-Aug-19	Narasimma Rao	MCX ENERGY	28-Aug-19	27-Sep-19	11800
28-Aug-19	Narasimma Rao	MCX ENERGY	28-Sep-19	20-Oct-19	10000

Payment Date	Name	Service Name	Tenure Start date	Tenure End date	Paid Amount (in ₹)
30-Aug-19	Narasimma Rao	MCX ENERGY	21-Oct-19	15-Nov-19	10000
13-Sep-19	Narasimma Rao	Premim MCX Energy	16-Sep-19	25-Nov-19	50000
1-Oct-19	Narasimma Rao	Premium MCX ENERGY	26-Nov-19	10-Dec-19	10030
	Narasimma Rao Total				91830
13-Nov-18	Nilesh Shelke	HNI Stock Cash	15-Nov-18	14-Dec-18	16000
14-Nov-18	<i>Nilesh Shelke</i>	<i>HNI Stock Cash</i>	15-Dec-18	15-Jan-19	22000
15-Nov-18	<i>Nilesh Shelke</i>	<i>HNI Stock Cash</i>	15-Dec-18	15-Jan-19	25000
16-Nov-18	Nilesh Shelke	HNI Stock Cash	16-Jan-19	5-Feb-19	38000
	Nilesh Shelke Total				101000
22-Oct-18	Peter C G	HNI Stock Cash	23-Oct-18	22-Nov-18	40000
23-Oct-18	Peter C G	HNI Stock Cash	23-Nov-18	17-Jan-19	56000
29-Oct-18	Peter C G	HNI Stock Cash	18-Jan-19	1-Feb-19	10000
1-Nov-18	Peter C G	HNI Stock Cash	2-Feb-19	8-Feb-19	11000
13-Nov-18	Peter C G	HNI Stock Cash	9-Feb-19	15-Feb-19	11000
16-Nov-18	Peter C G	HNI Stock Cash	16-Feb-19	22-Feb-19	11000
8-Jan-19	Peter C G	HNI Stock Cash	23-Feb-19	12-Mar-19	20000
14-Mar-19	Peter C G	HNI Stock Cash	14-Mar-19	13-May-19	15000
18-Mar-19	Peter C G	HNI Stock Cash	14-May-19	23-May-19	10000
12-Jun-19	Peter C G	HNI Stock Cash	13-Jun-19	12-Jul-19	22000
	Peter C G Total				206000
2-Oct-19	Prakash Yadav Bhange	HNI Stock Option	7-Oct-19	15-Dec-19	86022
19-Sep-19	Prakash Yadav Bhange	Index Option	24-Sep-19	23-Oct-19	5900
17-Oct-19	Prakash Yadav Bhange	Premium All Equity	21-Nov-19	18-Apr-20	194768
27-Sep-19	Prakash Yadav Bhange	Premium All Equity	30-Sep-19	20-Nov-19	50150
24-Sep-19	Prakash Yadav Bhange	Premium Index option	25-Sep-19	24-Oct-19	25960
	Prakash Yadav Bhange Total				362800
29-Jan-19	<i>Prashant Sandipan Bhil</i>	<i>Platinum Stock Cash</i>	1-Feb-19	28-Feb-19	60000

Payment Date	Name	Service Name	Tenure Start date	Tenure End date	Paid Amount (in ₹)
30-Jan-19	Prashant Sandipan Bhil	Platinum Stock Cash	1-Feb-19	28-Feb-19	100000
5-Mar-19	Prashant Sandipan Bhil	Ultra Dynamic Equity Service	7-Mar-19	6-Apr-19	30000
6-Mar-19	Prashant Sandipan Bhil	Ultra Dynamic Equity Service	7-Mar-19	6-Apr-19	20000
	Prashant Sandipan Bhil Total				210000
15-Nov-18	Priya Ranjan Roy	HNI Stock Cash	16-Nov-18	31-Dec-18	51000
29-Nov-18	Priya Ranjan Roy	HNI Stock Cash	1-Jan-19	15-Jan-19	15000
30-Nov-18	Priya Ranjan Roy	HNI Stock Cash	16-Jan-19	21-Jan-19	5000
30-Oct-18	Priya Ranjan Roy	Stock Cash	1-Nov-18	31-Dec-18	18000
5-Nov-18	Priya Ranjan Roy	stock cash	1-Jan-19	31-Jan-19	11000
	Priya Ranjan Roy Total				100000
2-May-19	Rahul Yadav	HNI Stock Cash	6-May-19	6-Aug-19	95000
	Rahul Yadav Total				95000
21-Nov-18	Rakesh Kumar Singhal	HNI Stock Cash	22-Nov-18	10-Dec-18	22000
22-Nov-18	Rakesh Kumar Singhal	HNI Stock Cash	11-Dec-18	20-Dec-18	11000
23-Nov-18	Rakesh Kumar Singhal	HNI Stock Cash	21-Dec-18	31-Dec-18	11000
4-Dec-18	Rakesh Kumar Singhal	HNI Stock Cash	1-Jan-19	10-Mar-19	75000
19-Dec-18	Rakesh Kumar Singhal	HNI Stock Cash	11-Mar-19	10-Apr-19	35000
18-Feb-19	Rakesh Kumar Singhal	HNI Stock Cash	11-Apr-19	18-Apr-19	5100
1-Mar-19	Rakesh Kumar Singhal	HNI Stock Cash	19-Apr-19	28-Apr-19	12000
2-Nov-18	Rakesh Kumar Singhal	Stock Cash	5-Nov-18	18-Nov-18	6000
14-Nov-18	Rakesh Kumar Singhal	Stock Cash	19-Nov-18	4-Dec-18	9000
	Rakesh Kumar Singhal Total				186100
27-Mar-19	Rishi Kumar	Premium Stock Cash	29-Mar-19	28-May-19	20000
28-Mar-19	Rishi Kumar	Premium Stock Cash	29-Mar-19	28-May-19	20000
28-Feb-19	Rishi Kumar	Stock Cash	4-Mar-19	13-Mar-19	3000
30-May-19	Rishi Kumar	Stock option	3-Jun-19	20-Jul-19	11000
3-Jun-19	Rishi Kumar	Stock option	21-Jul-19	31-Dec-19	33500
	Rishi Kumar Total				87500
23-Aug-18	Rupak Rai	Premium Stock Option	23-Aug-18	23-Sep-18	100000
30-Aug-18	Rupak Rai	Premium Stock Option	30-Aug-18	30-Sep-18	20000

Payment Date	Name	Service Name	Tenure Start date	Tenure End date	Paid Amount (in ₹)
<i>31-Aug-18</i>	<i>Rupak Rai</i>	<i>Premium Stock Option</i>	<i>31-Aug-18</i>	<i>30-09-2018</i>	<i>22000</i>
6-Aug-18	Rupak Rai	Stock Cash	6-Aug-18	6-Sep-18	10000
<i>11-Aug-18</i>	<i>Rupak Rai</i>	<i>Premium Stock Option</i>	<i>11-Aug-18</i>	<i>11-Sep-18</i>	<i>30000</i>
<i>16-Aug-18</i>	<i>Rupak Rai</i>	<i>Premium Stock Option</i>	<i>16-Aug-18</i>	<i>16-Sep-18</i>	<i>13000</i>
	Rupak Rai Total				195000
28-Mar-19	Saurabh Kumar Gupta	hni stock cash	1-Apr-19	15-Apr-19	5000
12-Apr-19	Saurabh Kumar Gupta	hni stock cash	16-Apr-19	15-Aug-19	106000
16-Apr-19	Saurabh Kumar Gupta	Premium All Equity	16-Aug-19	25-Aug-19	15000
19-Apr-19	Saurabh Kumar Gupta	Premium All Equity	26-Aug-19	5-Sep-19	10000
24-Apr-19	Saurabh Kumar Gupta	Premium All Equity	6-Sep-19	15-Sep-19	10000
	Saurabh Kumar Gupta Total				146000
<i>3-Aug-18</i>	<i>Syed Azmath Ali</i>	<i>Stock Cash</i>	<i>6-Aug-18</i>	<i>10-Aug-18</i>	<i>5000</i>
<i>7-Aug-18</i>	<i>Syed Azmath Ali</i>	<i>Stock Cash</i>	<i>8-Aug-18</i>	<i>18-Aug-18</i>	<i>5000</i>
<i>10-Aug-18</i>	<i>Syed Azmath Ali</i>	<i>Stock Cash</i>	<i>11-Aug-18</i>	<i>30-Aug-18</i>	<i>10000</i>
	Syed Azmath Ali Total				20000
8-Oct-18	Yagnesh Rawal	HNI Stock Option	8-Oct-18	23-Oct-18	11000
11-Oct-18	Yagnesh Rawal	HNI Stock Option	24-Oct-18	18-Dec-18	54000
12-Oct-18	Yagnesh Rawal	HNI Stock Option	12-Nov-18	15-May-19	153000
31-Oct-18	Yagnesh Rawal	HNI Stock Option	16-May-19	15-Jul-19	40000
	Yagnesh Rawal Total				258000

The rows in italics indicate overlapping of service tenure and collection of service fees even before expiry of previous service tenure.

113. From the above, I note that:

- In complete disregard of the proposed investment of the clients, huge amount of service fee was extracted from the clients by allotting multiple packages to the clients in a very short span of time. For instance, Noticee 1 sold same product/ service multiple times within a short span of time in case of clients namely Amit Ashok Mandavkar, Amrik Singh Bains, Arvind Kumar, Ashok Kumar Babel, Bibek Ranjan Garnaik, Manoj Gusain, Peter C G, Rakesh Kumar Singhal, etc.

- b) The products so sold had overlapping tenures in case of clients Amrik Singh Bains, Arvind Kumar, Duradundhi, Humesh Kumar, Rupak Rai, etc.
- c) Fincap had charged different amount as service fees for the same product with the same duration in case of clients Arvind Kumar, Bibek Ranjan Garnaik, Duradundhi, Humesh Kumar, etc. Further, the amount of service fees charged by Fincap for the same product was not proportionate to the period of service in case of clients Lila Ram, Duradundhi, Manoj Gusain, etc.

114. It has been alleged that Noticee 1 also failed to provide communication proof of sending invoices to clients with regard to fee charged by them. SCN further alleges that the above acts of Noticee 1 have been carried out with the purpose of defrauding the clients and to earn maximum fees.

115. Noticee 1 has submitted that prior to the SEBI (Investment Advisers) (Amendment) Regulations 2020 came in force, there was no restriction on amount of subscription fee to be collected or products to be offered, and in the absence of any regulation, multiple subscriptions were offered to the clients. Further, it has been submitted that all subscriptions were sold through online mode and at arm's length, and none of the clients were sold unsuitable services. Noticee 1 has also submitted that none of the subscriptions sold to the clients are under duress and all the clients who subscribed multiple subscriptions had their own free will. 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 Noticee 1 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 Noticee 1 in this regard.

116. In response to queries raised during the hearing, Noticee 1 submitted that the website contained all the pricing and features of their services, and for convenience, clients had option to pay either the full amount or in part for the prescribed subscription charges of services. Noticee 1 also submitted that she has not sold same services multiple times, rather she has collected payments in parts for specific service offered for a specific duration, however each time the payment is collected an invoice to the tune of amount received and corresponding period is created for accounting purpose.

117. With regard to the *Noticee 1*'s submission that she had not sold same services multiple times rather had collected payments in parts for specific service offered for a specific duration, I note that *Noticee 1* had not raised this contention in reply to SCN, but raised the same only upon asking specific query during the hearing on reasons for selling same service multiple times to clients within short span for the same tenure.
118. For the sake of argument, if the above submission of *Noticee 1* with respect to part payments is considered, I do not see any explanation as to why for overlapping periods, *Noticee 1* has collected multiple payments within a short span of time for same product, as has already been observed. Clearly, *Noticee 1* in order to maximize her own fee (benefit), sold multiple packages to the clients. Also, I have already concluded that *Noticee 1* has charged disproportionate/ unreasonable fees/ charges towards its services in comparison to client's income/ investment amount, loss absorbing capacity and financial strength. In view of the same, I am not inclined to accept the contention of *Noticee 1* in this regard.
119. In view of the above, I find that *Noticee 1* has violated Clauses 1, 2 and 6 of Code of Conduct for investment advisers provided in Third Schedule of IA Regulations read with Regulation 15(9) of IA Regulations. Further, I also find that the above acts of *Noticee 1* come under the purview of 'fraud' as defined under Regulation 2(1)(c) of PFUTP Regulations.

N. Non Maintenance of records

120. It has been alleged that during inspection, *Noticee 1* failed to provide documents with respect to record in respect of investment advice rendered to clients, such as suitability assessment document of investment advice rendered, message logs of clients, voice recording, etc. Instead of providing the documents, *Noticee 1* informed that investment advices are given on telephone and she does not have call recordings. The same was accepted by *Noticee 2* in his statement dated December 03, 2019 before the Inspecting Authority. The relevant extract of same is as follows:

"Q. 26: Please provide Call Records for Inspection Period.

Ans. No call records are maintained.

Q. 30 Please provide SMS Log, Performance Track Records and Call Data records for following days

a. January 17, 2019

b. April 08, 2019

c. June 12, 2019

Ans. No such data is available with me. No such is data is maintained.

121. *Noticee 1* in reply to SCN has submitted that she has maintained proper records pertaining to all necessary documents, however, in the absence of specific provisions pertaining to maintenance of communication records, the data is not maintained. It has also been submitted that *Noticee 1* has put best effort to maintain the records in compliance with provisions of Reg. 19 of IA Regulations, and the same was made available to the Inspection Team at the time of Inspection.
122. During inspection, *Noticee 1* informed that investment advices are given on telephone and they do not have call recordings, which was accepted by *Noticee 2* in his statement dated December 03, 2019 before the Inspecting Authority. I note that Regulation 19 of IA Regulations requires an IA to, *inter alia*, maintain KYC records of clients, suitability assessment of the advice being provided, Investment advice provided, whether written or oral, rationale for arriving at investment advice, a register or record containing list of the clients, the date of advice, nature of the advice, etc, in physical or electronic form for a minimum period of five years. Thus, IA Regulations always required that records of oral investment advice provided also have to be maintained. Accordingly, the contention of *Noticee 1* that “*in the absence of specific provisions pertaining to maintenance of communication records, the data is not maintained*” is untenable.
123. In view of the above, I find that *Noticee 1* has violated the provisions of Regulation 19 (1) and Regulation 19 (2) of IA Regulations.

O. Failure to provide training in relation to PMLA/ AML Provisions

124. It has been alleged that during inspection, *Noticee 1* failed to provide documents with regard to date of training, subject of training, number of participants, materials distributed, attendance sheet of employees, etc. related to provisions of PMLA/AML. In her reply, *Noticee 1* denied the charge and submitted that she had provided training for PMLA/AML Guidelines to employees and the PMLA Policy is already provided during Inspection.
125. In this regard, it is noted on the basis of material available on record that *Noticee 1* has not furnished any specific details and evidence with regard to training provided to employees viz., date of training, subject of training, number of participants, materials distributed, attendance sheet of employees, etc. I am, therefore, unable to accept the contention of *Noticee 1* in this regard.

126. In view of the above, I find that *Noticee 1* has violated Clause 8 of Code of Conduct for Investment Advisers as mentioned in Schedule III of IA Regulations *read with* Regulation 15(9) of IA Regulations and Clause 2.12.2 of the SEBI PMLA Master Circular dated July 4, 2018. However, I do not hold *Noticee 1* in violation of Clause 9 of Code of Conduct for Investment Advisers, as the same is applicable in case of an investment adviser, which is a body corporate.
127. *Noticee 1* has drawn reference to two judgments of Whole Time Member(s) of SEBI in the matter of M/s GRS Solution (Prop.: Nilesh Vispute), dated February 8, 2022 and CapitalVia Global Research Limited (CapitalVia) dated January 20, 2017 with regard to the charges in respect of violation of PFUTP Regulations. I have perused the said orders and find that the facts of the present case are different and distinguishable from those cases and therefore, I am not inclined to place reliance on the same as has been submitted by *Noticee 1*.
128. Further, I am unable to accept the contention of the *Noticee 1* that only few complaints have been received against her or that lapses observed are merely of regulatory/procedural in nature. The violations as noted above are not technical and have to be viewed seriously.
129. To summarize the findings recorded in the preceding paragraphs, I note the following:
- a) Operations of Fincap Research (sole proprietorship of Ms. Sonika) / *Noticee 1* were handled by her husband, Mr. Mahavir / *Noticee 2*.
 - b) Ms. Sonika provided wrong information and fake experience certificates to demonstrate her knowledge and capability to undertake investment advisory work for the purpose of seeking registration from SEBI as an IA.
 - c) *Noticee 1* in the application for seeking registration as IA had provided false declaration that all her representatives would comply with certification and qualification requirements.
 - d) *Noticee 1* failed to inform about the change in registered address which is material information for a registered intermediary.
 - e) *Noticee 1* continued her operations even after expiry of NISM certificates .
 - f) *Noticee 1* provided false information regarding number of clients and turnover in response to pre-inspection questionnaire to SEBI. In fact, *Noticee 1* furnished three different sets of data on number of clients and turnover on three different occasions.
 - g) *Noticee 1* earmarked inappropriate weight as high as 25% of the total score to three questions (out of 21). Also, certain questions were leading questions framed to elicit the desired response from the clients. RPF of *Noticee 1* incorrectly

assigned higher risk points to investors interested in regular income so that they may in turn be sold services w.r.t. high risk products like derivatives.

- h) *Noticee 1* had not obtained supporting documents/evidence from clients while doing risk profiling of clients.
- i) *Noticee 1* had already sold and started investment advisory services before the completion of risk profiling of the clients.
- j) *Noticee 1* charged disproportionate/ unreasonable fees/ charges towards its services in comparison to client's income/ investment amount, loss absorbing capacity and financial strength.
- k) Risk Profiles of clients were revised within short period (in some cases within 3 days) with illogical changes in the response to the questions to sell unsuitable high risk products to clients.
- l) *Noticee 1* sold services/ products in dubious manner with unethical intent and unfair and unreasonable advisory/service fee was charged from the client. *Noticee 1* also made false claims regarding assured returns.
- m) *Noticee 1* sold multiple products to clients within a short span of time having overlapping tenures and charged arbitrary, unreasonable and unfair amount of fees.
- n) *Noticee 1* failed to provide, during inspection, records in respect of investment advice rendered to clients, such as suitability assessment document of investment advice rendered, message logs of clients, voice recording, etc.
- o) *Noticee 1* failed to provide training to its employees in relation to PMLA/ AML Provisions.

130. In my view, the IA Regulations, *inter alia*, intend to protect the interest of investors and maintain the integrity of the market and to provide for appropriate safeguards to ensure that the investors are saved from IAs who do not act within the four walls of the IA Regulations. Looking at the scheme of IA Regulations, the role of an IA is to provide honest and fair advice to its clients considering their financial situation, investment experience, investment goals, etc. The IA, among other things, should also make adequate disclosures of the relevant material information to its clients and should charge fair and reasonable fee from them. In the present case also, *Noticee 1* was under an obligation to provide investment advice, suitable to every client. However, the *modus operandi* adopted by *Noticee 1*, as noted hereinabove, shows that *Noticee 1* was actually not practicing investment advisory in the manner envisaged under the IA Regulations.

131. In my view, *Noticee 1* was knowingly acting in a deceitful manner, by:

- (i) Allowing Mr. Mahavir to run her proprietorship i.e. Fincap Research while registration was obtained by Ms. Sonika and name of Mr. Mahavir was not even mentioned as a representative who would work with Fincap.
- (ii) Submitting fake experience certificates in order to obtain registration from SEBI as IA.
- (iii) Submitting false declaration that all representatives would comply with certification and qualification requirements under Regulation 7(2) of IA Regulations, at all times.
- (iv) Changing the registration address of the IA without intimation to SEBI as a result of which wrong information was disseminated to public on SEBI website.
- (v) Providing false information in pre-inspection questionnaire about the actual number of clients and amount of revenue generated by *Noticee 1*.
- (vi) Including questions in Risk Profile questionnaire which were vague, ambiguous and misleading, by assigning in-appropriate weight to certain questions.
- (vii) Selling products before doing risk profiling of the clients.
- (viii) Charging disproportionate/ unreasonable fees/ charges towards the services in comparison to client's income/ investment amount, loss absorbing capacity and financial strength.
- (ix) Revising risk profile within short period with illogical changes in responses in order to sell unsuitable high risk products to clients.
- (x) Making claims of assured return.
- (xi) Selling multiple products to the clients within a short span of time having overlapping tenures and charging arbitrary, unreasonable and unfair amount of fees.

132. An IA cannot make a false statement without having reasonable grounds for believing it to be true as mandated in PFUTP Regulations. An IA cannot sell products guaranteeing assured returns to investors as was being done by *Noticee 1* in the present case. Knowing fully well that all investments in stocks, derivatives, etc. in respect of which *Noticee 1* was offering investment advice are subject to market risk, she was falsely promising unrealistic assured returns on investments and had communicated the same to clients through her website and other means. It is also noted that the advisory process being followed by *Noticee 1* was akin to selling pre-fixed plans and extracting more and more money from the clients. From the findings discussed hereinabove, it is clear that *Noticee 1* was running a pre-meditated device, plan or scheme whereunder, the *Noticee 1* / representatives of *Noticee 1* 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.

133. The above discussed non-genuine and deceptive activities, misrepresentations are fraudulent and are covered within the definition of “fraud” provided 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

...”

134. Therefore, I find that the fraudulent activities / dealings on part of *Noticee 1*, of the nature discussed in preceding paragraphs show that *Noticee 1* was running a scheme and defrauding its clients, with an intention to maximize her income through investment advisory / service fees by employing the above discussed devices, without keeping in mind the requirements of the clients and keeping her own interest ahead of their client’s interest.

135. In my view, the above discussed non-genuine and deceptive “advisory” activities of *Noticee 1* are fraudulent and are covered under the definition of “fraud” under Regulation 2(1)(c) of the PFUTP Regulations. Therefore, I hold that *Noticee 1* has violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act, and Regulations 3 (a), (b), (c) and (d) and Regulation 4(1), 4(2)(k) and 4(2)(s) of the PFUTP Regulations.
136. As has already been recorded in the preceding paragraphs, *Noticee 2* (the husband of *Noticee 1*) was practically running and controlling the operations of the proprietorship (Fincap Research) belonging to *Noticee 1*. When the inspecting team of SEBI inspected the office premises of *Noticee 1*, statements of *Noticee 1*, *Noticee 2* and employees were recorded. In the statements of *Noticee 1*, *Noticee 2* and various employees of *Noticee 1* present on the office premises at the time of inspection, one common fact emerged that the investment advisory activity held by *Noticee 1* in her own name was being run and controlled by *Noticee 2*. Further, as mentioned at various places in this order, the response to various queries related to operations of investment advisory activities were provided by *Noticee 2* and not *Noticee 1*. In terms of regulation 7 of the IA Regulations, *Noticee 1* could have intimated SEBI about the representatives who would assist her in the investment advisory activity. However, *Noticee 2*’s name was not mentioned by her to SEBI. In her submission in response to the SCN, *Noticee 1* has accepted the fact that *Noticee 2* was performing necessary administrative, accounting and back-office work of the business. The employees of *Noticee 1* also stated that *Noticee 2* was involved in the investment advisory activity. In terms of regulation 3(1) of the IA Regulations, no person shall act as or hold himself out as an IA unless he has obtained a certificate of registration from SEBI by complying with the requirements under the IA Regulations. As already discussed, *Noticee 2*, as the *de facto* person in-charge of the investment advisory activity of *Noticee 1*, was holding himself out as an IA to the employees and clients of *Noticee 1*. Such an act of *Noticee 2*, apart from being in violation of regulation 3(1) of the IA Regulations, is also tantamount to fraudulent misrepresentation and is covered within the definition of “fraud” under regulation 2(1)(c) of the PFUTP Regulations. Considering the above, I conclude that *Noticee 2* was at all times carrying out the investment advisory activity in the name of *Noticee 1*. In the foregoing paragraphs of this order, I have already concluded that various acts of *Noticee 1* were “fraudulent” and in violation of the provisions of SEBI Act and the PFUTP Regulations. Therefore, *Noticee 2*, who at all times was managing and running the investment advisory in the name of *Noticee 1*, also has to be held responsible for the “fraudulent” acts carried out in the name of *Noticee 1* as a registered IA.

137. 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 her 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 her 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. As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of *Noticee 1* discussed above 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, IA Regulations, Schedule II of SEBI (Intermediaries) Regulations, 2008 and SEBI PMLA Master Circular dated July 4, 2018 have been established, I am of the view that necessary directions are required to be issued against *Noticee 1* and monetary penalty as envisaged under the SCN also needs to be imposed. Thus, directions under Sections 11(1), 11 (4), 11B(1), 11(4A), 11B (2), Regulation 35 of SEBI (Intermediaries) Regulation 2008 and directions for imposing penalty under Rule 4 of SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 read with section 15HA, 15HB (for violations prior to March 08, 2019) and 15EB (for violations subsequent to March 08, 2019) of the SEBI Act, 1992, need to be issued.
138. The SCN, *inter alia*, envisages issuance of a direction to *Noticee 1* for refund of the amount of ₹ 56,07,051/-, received from the clients/investors/complainant on or after December 02, 2019, 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 Fincap / *Noticee 1* was ineligible to collect fee or was collecting fee without being registered. It is also not alleged in the SCN that Fincap/ *Noticee 1* had entered into void or voidable agreements with its clients whereunder fee was paid by the clients. It is pertinent to mention here that the charges levelled in the SCN, as discussed earlier, have been based on the activities / conduct of *Noticee 1* 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 SEBI Act, 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 ₹ 56,07,051/- was collected by *Noticee 1* 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

(Fincap/ Noticee 1) would not be suitable in the present case, and other directions need to be considered.

139. Further, before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions in SEBI Act, 1992 for facility:

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

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

Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

140. 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 is reproduced as under:

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.

141. I note that the SCN has not brought out the quantum of profit/gains made by the *Noticees*, if any, by collecting unreasonable amount of fees, using improper RPFs, etc., along with the other violations or the loss caused to the investors, if any. I also note that the SCN does not quantify the loss which the clients have suffered on account of the *Noticees'* acts and conduct. However, as discussed earlier, both the *Noticees* in the present case have 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, *Noticee 1* 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 that from the year 2018, *Noticee 1* has provided services to more than 400 unique clients. It is noteworthy that the present SCN is based upon an examination of certain samples only and therefore, the violations committed by the *Noticees* could have been much more than what has been discussed in the preceding paragraphs. In my view, the above factors need to be weighed in while arriving at the amount of penalty to be imposed on the *Noticees*.

Directions and Monetary Penalty

142. In view of the foregoing, 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 *Noticees*:

- a) The *Noticees* are 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 *Noticees* are also restrained from associating themselves 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) *Noticee 1* shall place a copy of this order on her website and shall also send a copy of this order to all her clients through email within 10 days from the date of this order.

143. 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 (₹)
Ms. Sonika Namdharani, Proprietor of M/s Fincap Research Investment Advisor	Section 12A (a),(b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations.	Section 15 HA	10,00,000
	<ul style="list-style-type: none"> Regulation 6(f), 7(1), 7(2), 13(a), 13(b), 15(1), 15(9), 15(13), 16(b)(iii), 16(d)(i) and (ii), 17(a), 17(d), 17(e), 19(1) and 19(2) of IA Regulations. Schedule II of the Intermediaries Regulations; Clauses 1, 2, 4, 6 and 8 of Code of Conduct specified in Schedule III of the IA Regulations [for violations prior to 08.03.2019]; Clause 2.12.2 of SEBI PMLA Master Circular dated July 4, 2018. 	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
Mr Mahavir Prasad Mundra	Section 12A (a),(b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations.	Section 15 HA	5,00,000
	Regulation 3(1) of IA Regulations	Section 15 HB	1,00,000
	Same violations as noted in row above committed subsequent to 08.03.2019	Section 15 EB	1,00,000

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

of penalties 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. In case of any difficulties in online payment of penalties, the said Noticee may contact support at portalhelp@sebi.gov.in. 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)	

145. This order comes into force with immediate effect.

146. This Order is without prejudice to the rights of SEBI to initiate / continue other actions against the aforementioned entities in accordance with law.

147. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, Depositories and Registrar, Transfer Agents of Mutual Funds and BSE Administration & Supervision Ltd. to ensure that the directions given above are strictly complied with.

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

Date: July 17, 2023
Place: Mumbai

Sd/-
AMARJEET SINGH
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA