

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

In respect of –

Noticee No.	Noticee's name
1.	Ms. Sonika Namdharani, Proprietor of M/s Fincap Research Investment Advisor (Registration no. INA100010545)
2.	Mr Mahavir Prasad Mundra

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

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated November 30, 2022, submitted by the Designated Authority (hereinafter referred to as the “**DA**”) in terms of regulation 26 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred as “**Intermediaries Regulations**”), wherein the DA, after considering the facts and circumstances, recommended that certificate of Registration of Ms. Sonika Namdharani (Proprietor of Fincap Research investment advisor) be cancelled with immediate effect. The DA also recommended that Mr. Mahavir Mundra be debarred from being employed or associated with any registered intermediary for the period of two years.
2. After considering the Enquiry Report, a Post Enquiry Show Cause Notice dated December 12, 2022 (hereinafter referred to as “**SCN**”), enclosing therewith the Enquiry Report of the DA, was issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to Ms. Sonika Namdharani (Proprietor of

Fincap Research Investment Advisor) (hereinafter referred to as “**Noticee 1/Ms Sonika**”) and Mr. Mahavir Prasad Mundra (hereinafter referred to as “**Noticee 2**”), husband of *Noticee 1*, under Regulation 27(1) of the **Intermediaries Regulations** calling upon them to show cause as to why the action recommended by the DA or any other action as contemplated in the Intermediaries Regulations, should not be taken against them.

3. Noticee 1 is registered as an Investment Adviser (hereinafter referred to as “**IA**”) under the provisions of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”) with effect from May 14, 2018.
4. SEBI had conducted an inspection of Noticee 1 for the period April 1, 2018 to November 30, 2019 (hereinafter referred to as “inspection period”), which *prima facie* revealed violations of provisions of the IA Regulations, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and Securities and Exchange board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”). Thereafter, considering the alleged violations of the provisions of SEBI Act, IA Regulations and PFUTP Regulations, SEBI appointed a DA under Regulation 24 of the Intermediaries Regulations to conduct an enquiry in the matter. A Show Cause Notice dated January 20, 2022 was issued by the DA under the provisions of Regulation 25 of the Intermediaries Regulations calling upon the Noticees to show cause as to why appropriate recommendations should not be made against them in terms of Section 12(3) of the SEBI Act read with Regulations 23 and 26 of the Intermediaries Regulations for the alleged violations. After considering the reply of the Noticees, the facts and circumstances of the case and material available on record, the DA submitted the Enquiry Report. The DA, in the Enquiry Report made, *inter alia*, the following observations and allegations in respect of the Noticees:

(a) Fincap Is run and controlled by Mr. Mahavir Mundra instead of Ms. Sonika Namdharani (Proprietor of Fincap)

It was observed that Mr. Mahavir Mundra, runs and controls Fincap Research and Ms. Sonika has no knowledge of Fincap's business or investment advisory services. In the statement taken under oath before Inspecting Authority, Ms.

Sonika has admitted that she did not know anything about investment advice and the operations of Fincap. She further stated that providing investment advice to clients was handled by her husband Mr. Mahavir. In his statement, Mr. Mahavir admitted that he was in charge and controlled the operations of Fincap. Registration was obtained after submitting documents pertaining to the eligibility, fit and proper requirement by Ms. Sonika, however the operations were run by Mr. Mahavir.

(b) Ms. Sonika obtained IA Registration by submitting Fake Experience Certificates

Ms. Sonika at the time of seeking registration had submitted experience certificates of working with SNV Associates during the period June 01, 2009 to September 30, 2014 as "Equity Research Analyst" and with Capital ways Financial Services from November 30, 2016 to December 31, 2017 as "Investment Adviser". However, at the time of Inspection, Ms. Sonika in her statement before Inspecting Authority stated that she was doing "calling work" during 2010-2014 in Capital way Indore. Ms. Sonika gave contradictory information regarding her experience certificate, at the time of IA registration and in the statement under oath.

(c) Ms. Sonika engaged representatives for rendering Investment Advice without registration and information to SEBI

The employees of Ms. Sonika rendered investment advice, conducted research and communicated buy/sell tips to clients without having requisite qualification and certification as required under the IA Regulations. The representatives of Ms. Sonika were not meeting criteria of representative of Investment Advisor as per IA regulations, and they do not hold the requisite NISM certificates.

(d) Fincap Investment Advisor's operations were conducted from office not registered as Registered office / Branch of the Fincap

During inspection, it was observed that, neither of the Noticees nor Ms. Sonika's employees were present at the address provided by her at the time of grant of registration. Upon inspection at the registered address, it was learnt that the Noticees were tenants of the registered address and that their office is at a different address. When the inspection team went to the given address it was noted that Ms. Sonika had been running her operations from a completely new address which was not her registered address or the branch office.

(e) Continuation of operations of Fincap even after expiry of NISM certificate

The NISM certificates of Ms. Sonika, i.e. NISM Series X-A and Series X-B submitted with application for seeking registration as IA had expired on October 31, 2019 and Ms. Sonika had failed to renew these certificates.

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

It was noted that, Ms. Sonika had submitted false information relating to number of clients and turnover in pre-inspection questionnaire as it did not match with the information provided during SEBI's inspection.

(g) Non-uniform and ambiguous Risk Profiling Questionnaire

It was observed that the questions were framed in an ambiguous manner in the Risk Profiling Questionnaire. Ms. Sonika earmarked inappropriate weightage as high as 25% of the total score to certain questions. Further, certain questions appeared to be leading questions so as to evince a specific answer. The questions were framed to make the clients fall under the high risk category so that they can be offered complex products like derivatives and commodity and forex related products.

(h) Non availability of supporting documents for risk profiling

It was observed that Ms. Sonika sought response from clients telephonically for each question and filled the questionnaire to complete the risk profiling. No supporting documents/evidence were obtained from clients while doing their risk profiling. Risk profiling was conducted merely on the basis of telephonic conversation and based on information extracted from Central KYC database. Ms. Sonika failed to provide the telephonic records citing that it does not have any infrastructure to maintain record of telephone conversations with clients despite the requirement under IA Regulations regarding maintenance of records in physical or electronic form for a minimum period of 5 years.

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

Ms. Sonika failed to produce any documentary evidence of communication of Risk profile and suitability assessment form in respect of sample clients selected for examination, which is required under the IA Regulations.

(j) Advisory Services Offered Prior to Risk Profiling

It was observed that Ms. Sonika had sold products and charged advisory fees even before the risk profiling of the clients was completed. It was observed that the products sold would not be appropriate to the clients' need as the risk profiling has not been completed for the client. This same was indicative of the fact that Ms. Sonika did not act honestly and her sole aim was to earn profits by selling products without caring for the needs of the clients.

(k) Suitability Assessment

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

It is observed that Ms. Sonika has selected and sold package/ product without any regard to the financial situation, risk tolerance level/loss absorbing capacity of the client and the amount he is willing to invest. The IA charged disproportionate/ unreasonable fees/ charges towards services which were disproportionate as compared to client's assets/ investment amount and financial strength. This indicated that Ms. Sonika had not followed the requirement of suitability advice to its clients and ignored their risk capacity, proposed investment amount, annual income, duration of investment, etc. while offering services to them and charging fees.

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

It was observed 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.

(l) 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 Ms. Sonika was involved in selling of services/products having vague Product Description/High Fees/ Assured or High Returns. Most of the products / services provided tips for intraday trading. Some of the products provide features of telephonic support by the IA. In most of the products, the IA gave assured returns claims in the details of products to clients. Further, it was also noted from the website of Fincap that statements were made indicating assured returns.

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

It is observed that Ms. Sonika had been selling same advisory products/services to the clients before completion of the tenure of the previous service. One client has been charged multiple times for one single service even before the expiry of duration of that service. In some cases, it was observed that within a month, more than 5 invoices were raised and huge payments were taken from clients.

(n) Non Maintenance of records

It was seen that Ms. Sonika had not maintained proper records with respect to investment advice rendered to clients, such as suitability assessment document of investment advice rendered, message logs of clients, voice recording, etc. In terms of the IA Regulations, an IA is mandated to maintain KYC records, Suitability assessment of advice etc. whether written or oral for a period of 5 years.

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

Ms. Sonika failed to furnish details with regard to date of training, subject of training, number of participants, materials distributed, attendance sheet of employees, etc. with regard to compliance with PMLA/AML provisions. As per circular dated July 4, 2018, all intermediaries registered with SEBI are required to comply with AML Guidelines. As per 2.12.2 of the said circular, intermediaries shall provide employees training program on AML and CFT procedures.

5. In view of the above, the DA in the Enquiry Report observed that the Ms. Sonika violated 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, Regulation 3(1), 6(f), 7(1), 7(2), 13(a), 13(b), 15(1), 15(13), 16(b)(iii), 16(d)(i), 16(d)(ii), 16(e), 17(a), 17(d), 17(e), 19(1) and 19(2), 25(2), of IA Regulations, Schedule II of the Intermediaries Regulations, Clauses 1, 2, 4, 6, 8 and 9 of Code of Conduct specified in Schedule III read with 15(9) of the IA Regulations and Clause 2.12.2 of SEBI PMLA Master Circular dated July 4, 2018. Further, the DA also observed that Mr. Mahavir violated 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.

Show Cause Notice, Personal Hearing and Reply of the Noticees

6. The Post Enquiry SCN dated December 12, 2022, enclosing therewith the Enquiry Report of the DA, was issued to the Noticees granting them 21 days to file their reply. The SCN issued to Noticee 2 on the address available on record returned undelivered. Subsequently, it was served to Noticee 2 on an alternate address. Thereafter, despite various reminders, neither of the Noticees filed any reply to the SCN.
7. An opportunity of personal hearing was granted to the Noticees on June 21, 2023. The Noticees requested for an adjournment and acceding to their request, the hearing was re-scheduled to July 4, 2023. On the said date, the authorized representative of the Noticees (Mr. Pulkit Mehta) was heard via video conferencing when he submitted that the Noticees have ceased their operations and have no future intention of carrying out any activity in the securities market. The authorized representative sought time to file written submissions on behalf of the Noticees. Thereafter, vide an e-mail dated July 4, 2023, the Noticees submitted the following:
 - i. *With regards to above SCN and recommendations made by the Designated Authority in the Enquiry Report we would like to inform that we have not conducted any business after November 2020.*
 - ii. *We have no intention to conduct Investment Advisory Business and participate in Securities Market in foreseeable future as well.*
 - iii. *We have no reservations against the recommendations made in the aforesaid enquiry report.*

Consideration of submissions and findings

8. I have gone through the post-enquiry SCN along with the Enquiry Report submitted by the DA and the submissions made on behalf of the Noticees made during the hearing and their post-hearing written submissions. It is pertinent to mention that the Noticees have not made any submission on merits in respect of the observations of the DA contained in the Enquiry Report which form a part of the SCN sent to the Noticees. The only information submitted by the Noticees is that they have not conducted any business after November 2020 and also that they have no intention to conduct Investment Advisory Business and participate in Securities Market in foreseeable future. The Noticees have also stated that

they have *no reservations against the recommendations made in the aforesaid enquiry report.*

9. It is a settled law that failure to submit any defense despite service of notice is equivalent to admission of the charge levelled in the notice. In this regard, it is relevant to advert to the following observation of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014):

“As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.”

10. In view of the above, I find that the allegations levelled in respect of the Noticees in the post-enquiry SCN discussed in earlier paragraphs stand established. Following is a summary of these allegations / charges established against the Noticees:

- i. Operations of Fincap Research (sole proprietorship of Ms. Sonika) / Noticee 1 were handled by her husband, Mr. Mahavir / Noticee 2.
- ii. Ms. Sonika / Noticee 1 provided wrong information and fake experience certificates.
- iii. 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.
- iv. Noticee 1 failed to inform about the change in registered address which is material information for a registered intermediary.
- v. Noticee 1 continued her operations even after expiry of NISM certificates .
- vi. 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.
- vii. 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.

- viii. *Noticee 1* had not obtained supporting documents/evidence from clients while doing risk profiling of clients.
- ix. *Noticee 1* had already sold and started investment advisory services before the completion of risk profiling of the clients.
- x. *Noticee 1* charged disproportionate/ unreasonable fees/ charges towards its services in comparison to client's income/ investment amount, loss absorbing capacity and financial strength.
- xi. 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.
- xii. *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.
- xiii. *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.
- xiv. *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.
- xv. *Noticee 1* failed to provide training to its employees in relation to PMLA/ AML Provisions.

11. In the same context, I also find that *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.

12. The above discussed non-genuine and deceptive activities and misrepresentations are fraudulent and are covered within the definition of "fraud" provided under regulation 2(1)(c) of "PFUTP Regulations. 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.

13. Considering the above, I find that the violations of the following provisions alleged against *Noticee 1* in the post-enquiry SCN stand established:

- (i) Regulations 3(a), (b), (c), (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with 12(a), (b) and (c) of SEBI, Act.
- (ii) Regulation 3(1), 6(f), 7(1), 7(2), 13(a), 13(b), 15(1), 15(13), 16(b)(iii), 16(d)(i) and 16(d)(ii), 17(a), 17(d), 17(e), 19(1), 19(2), 25(2) of IA Regulations.
- (iii) Schedule II of Intermediaries Regulations. Clauses 1, 2, 4, 6 and 8 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.
- (iv) Clause 2.12.2 of the SEBI Circular dated July 4, 2018.

14. In addition to the above, on the basis of the material available on record, I find that *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 recorded in the Enquiry Report, 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. *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. *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*. 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.

Consideration of the recommendations made by the DA:

15. I note that the DA has recommended in the Enquiry Report that the certificate of *Noticee 1* be cancelled. Vide post-enquiry SCN dated December 12, 2022, inter alia, *Noticee 1* was called upon to show cause as to why action recommended

by the DA or any other penalty should not be imposed on her in terms of Regulation 27 of the Intermediaries Regulations. As recorded in the preceding paragraphs, the alleged violations of provisions of SEBI Act, PFUTP Regulations, IA Regulations and the SEBI Circulars have been established against Noticee 1. In light thereof, and considering the gravity of violations, I find that it is a fit case for cancellation of registration of Noticee1 as recommended by the DA in the Enquiry Report.

16. In addition to the above, the DA has also recommended, debarment of Noticee 2 i.e. Mahavir Mundra for being employed or associated with any registered intermediary for the period of two years. As brought out in earlier paragraphs, Noticee 2 has been found to be in violation of the provisions of SEBI Act, PFUTP Regulations and the IA Regulations. At the same time, it is also noticed from the material available on record that Noticee 2 was not an employee or officer of Noticee 1. The action that can be recommended under regulation 26(1)(v) of the Intermediaries Regulations has been envisaged to operate only against an officer of the intermediary. Accordingly, the recommended action of debarment of Noticee 2 from being employed or associated with any registered intermediary for the period of two years would not be appropriate under these proceedings.

17. However, I find it pertinent to mention here that in respect of the same set of alleged violations by the Noticees, separate proceedings under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act have been initiated against the Noticees. It is noted that vide an order dated July 17, 2023, the said proceedings have been disposed off. Vide the said order, Noticee 2 has been 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 years. Further, Noticee 2 has also been restrained from associating himself as a director or key managerial personnel with any listed public company or any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period of two years. Additionally, monetary penalty has also been levied on Noticee 2 vide the said order. In my view, the directions/penalty issued/imposed against Noticee 2 vide the order dated July 17, 2023, for the same set of violations (as have been established in the present proceedings) would be commensurate with the violations committed by Noticee 2 in the given facts and circumstances.

Directions

18. In exercise of the powers conferred upon me in terms of Section 12(3) read with Section 19 of the SEBI Act and Regulation 27 of the Intermediaries Regulations and after considering the gravity of the violations committed by Noticee 1 as noted in preceding paragraphs, I, hereby cancel the Certificate of Registration (bearing no. INA100010545) of Ms. Sonika Namdharani, Proprietor of M/s Fincap Research Investment Advisor.
19. As regards Mr. Mahavir Mundra, for the reasons recorded in paragraphs 16 and 17. above, I am not inclined to issue any directions against him in these proceedings. The directions issued against him vide the order passed under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act, dated July 17, 2023 shall operate independent of this order.
20. This order shall come into force with immediate effect.
21. A copy of this order shall be served on the Noticees and BSE Administration & Supervision Ltd.

Place: Mumbai
Date: July 17, 2023

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