

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 35 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AND REGULATION 28 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INVESTMENT ADVISERS) REGULATIONS, 2013

In respect of:

Noticee No.	Name of the Noticee(s)	PAN
1.	Investment Research Advisor (SEBI Registration no. INA000003387) Proprietor: Amit Gangrade	AVRPG8196P
2.	Algo System Proprietor: Sudeep Gangrade	GDTPS4158F

In the matter of Investment Research Advisor

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

BACKGROUND:

- Investment Research Advisor, Proprietor - Amit Gangrade (hereinafter referred to as “**Noticee No. 1**”) is registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as an Investment Adviser (hereinafter referred to as “**IA**”) under SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”) having registration number INA000003387, with effect from August 24, 2015. Algo System, Proprietor – Sudeep Gangrade (hereinafter referred to as “**Noticee No. 2**”) is not an intermediary registered with SEBI in any capacity.

2. SEBI received multiple complaints against Noticee No.1. Pursuant thereto, SEBI initiated an inspection into the affairs of Noticee No.1 which has not been commenced in view of an email dated March 9, 2020 from Ms. Kanupriya Gangrade (wife of Amit Gangrade) informing that Amit Gangrade is under custody of Crime Branch, Indore and data server and other records relevant for the inspection were under custody of Crime Branch. Based on the documents and information available on records, an examination into the affairs of the Noticees were conducted and based on the findings, a Show Cause Notice dated October 13, 2022 (hereinafter referred to as “**SCN**”) was issued to the Noticees. The present proceedings emanate from the said SCN wherein the Noticees have been *prima facie* alleged to have violated the following provisions:

Noticee No. 1:

- I. Regulation 16(a), (b) and Regulation 17(a) of IA Regulation for not doing risk profiling and suitability analysis of the client.
- II. SEBI Circular dated December 27, 2019 read with Clause 5 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations for failure to display status of complaints on website and not transparent in providing adequate information to the clients to take informed decisions; and SEBI Circular dated December 18, 2014 read with Regulation 21(1) of IA Regulations for non-submission of Action Taken Report (“**ATR**”) or delayed submission of ATR.
- III. Regulation 6(b) and Regulation 7(2) read with Regulation 13(a) of IA Regulations for running investment advisory activity without having NISM certification.
- IV. Regulation 15(1), Clause 1 and 2 and 6 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations, Regulation 3(a), (b), (c), (d), 4(2)(o) and 4(2)(s) SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) read with Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) for promising assured / guaranteed returns to the clients, charging

unreasonable fees in an arbitrary manner, defrauded clients in collusion with another unregistered connected entity.

Noticee No. 2

Section 12(1) of SEBI Act read with Regulation 3(1) of IA Regulations read with Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A(c) of SEBI Act for colluding with Noticee No. 1 and devising a scheme to defraud the investors and taken payment from clients for providing investment advice on products related to securities market without having registration from SEBI.

SHOW CAUSE NOTICE, REPLY AND HEARING:

3. The SCN was served upon the Noticees at the address available on record. Noticee No. 1 vide email dated November 07, 2022 and March 28, 2023 submitted his replies to the SCN. Noticee No. 2 vide email dated February 13, 2023 has submitted reply to the SCN. The submissions of the Noticees will be taken up issue-wise and dealt with suitably in the later part of this order.
4. The Noticees were granted an opportunity of personal hearing on December 15, 2022. Noticee No. 1, vide email dated December 11, 2022, requested adjournment for scheduled hearing. Noticee No. 2, vide email dated December 15, 2022, requested for adjournment and also requested for inspection of records and documents used for issuance of the SCN. The Inspection of records and documents was duly granted to Noticee No. 2 and the inspection was conducted on January 10, 2023 through authorized representative Mr. Ali Asgar Tambawala, Company Secretary. The hearing was held on March 09, 2023 and authorized representatives viz. Mr. Abhishek Mishra, Company Secretary for Noticee No. 1 and Mr. Ali Asgar Tambawala for Noticee No. 2, appeared for hearing through video conferencing and reiterated the submissions made earlier vide emails dated November 07, 2022 and February 13, 2023, respectively. Subsequently, Noticee No. 1 has made additional submission vide email dated March 28, 2023.

CONSIDERATION OF ISSUES AND FINDINGS:

5. I note that the SCN contains multiple allegations against the Noticees, and for the sake of convenience and clarity, I shall deal with each of the allegations independently in the following paragraphs.

Allegation I – Failure to do risk profiling and suitability analysis of a client

6. It is alleged in the SCN that Noticee No. 1 has not followed the procedure detailed in the Regulation 16(a) and 16 (b) read with Regulation 17(a) of IA Regulations relating to the risk profiling and suitability assessment of clients in respect of a client named R. Nadiya.
7. The provisions of the IA Regulations alleged to have been violated are reproduced hereunder:

Risk profiling.

16. Investment adviser shall ensure that,-

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

(i) age

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

(iii) income details;

(iv) existing investments/ assets;

(v) risk appetite / tolerance;

(vi) liability / borrowing details.

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

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

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

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

.....

Suitability.

17. Investment adviser shall ensure that,-

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

8. Noticee No. 1 has submitted that he always carried out the risk profiling of his clients and provided the product which were suitable and appropriate to the client. He carried out the risk profiling of R. Nadiya which is available in the records submitted to Crime Branch, Indore. He is unable to submit the records as the Crime Branch, Indore had seized the systems of Noticee No. 1 in which all the client's data was stored and maintained.
9. I note that the allegation is based on the written statement made by Pooja Patidar, compliance manager of Noticee No. 1. I note that the said statement was submitted pursuant to visit by Pooja Patidar along with Vaibhav Gangrade (quality and compliance executive) and Sudeep Gangrade (team leader and operation manager) in the SEBI Indore Local Office on November 20, 2019 on being called by SEBI to resolve the complaint filed by R. Nadiya. Pooja Patidar, Sudeep Gangrade and Amit Gangrade had handed over their statements in writing to SEBI. As per the statement of Pooja Patidar, she has admitted that the service was provided to R. Nadiya without doing Risk Profiling and Suitability Assessment. Noticee No. 1 has contended that the submissions taken by SEBI from Pooja Patidar, Sudeep Gangrade and Noticee No.1 on their visit to the SEBI Office on November 20, 2019 were under threat/coercion/undue influence of the SEBI officer and thus, the same should not be taken on record. In this regard, it is my view that the Noticee is coming up with this defence which is an afterthought as neither he nor any other person who made the submissions raised this issue for such a prolonged period.
10. Therefore, in the absence of documents to support risk profiling having been done and based on the statement given by representative of Noticee No. 1, I find that Noticee No. 1 has violated Regulation 16(a) and 16 (b) read with Regulation 17(a) of IA Regulations. However, I am willing to take a lenient view on the same as only one such instance has been made available as an evidence for the said allegation.

Allegation II – Non-redressal of Investor grievances and non-disclosure of status of complaints on website

11. It is alleged in the SCN that Noticee No. 1 did not file or delayed in filing the Action Taken Report, thereby, violating the SEBI Circular dated December 18, 2014 read with Regulation 21(1) of IA Regulations. It is also alleged that Noticee No. 1 failed to display status of complaints on his website which is in violation of SEBI Circular dated December 27, 2019 read with Clause 5 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations

12. The provisions of the SEBI Circulars and IA regulations alleged to have been violated are reproduced hereunder:

- i. As per Regulation 21 of IA Regulations, the Noticee No. 1 was required to redress clients' grievances promptly. SEBI's Circular CIR/OIAE/2014 dated December 18, 2014 also states that registered intermediaries, to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days.
- ii. Clause 1(iv) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 reads as follows:

(iv) Display of complaints status on website

In order to bring more transparency and enable the investors to take informed decision regarding availing of advisory services, IAs shall display the following information on the homepage (without scrolling) of their website/mobile app. The information should be displayed properly using font size of 12 or above and made available on monthly basis (within 7 days of end of the previous month):

Number of complaints					
At the beginning of the month	Received during the month	Resolved during the month	Pending during the month	Reasons for pendency	

iii. **IA Regulations**

General responsibility.

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

THIRD SCHEDULE

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

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

CODE OF CONDUCT FOR INVESTMENT ADVISER

5.Information to its clients

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

13. It is alleged that 19 complaints were pending against Noticee No. 1 on SCORES platform as on June 05, 2020. Of these, in 6 complaints, Noticee No. 1 had failed to file ATR and in another set of 2 complaints, ATR was filed after thirty days of receipt of complaint. In this regard, Noticee No. 1 has submitted that he stopped his operations from November, 2019 and since he was in the custody of the Crime Branch from March, 2020 to June, 2020, he did not display the complaints' status on the website and was not able to submit the ATR on the SEBI SCORES Portal. Post release from the custody of Crime Branch, he updated the website and submitted the ATR for all pending complaints on June 20, 2022.

14. From the material available on record, I note the following with respect to the 8 complaints for which the allegation has been made:

S.No.	Complaint No.	Complainant Name	Date of receipt of complaint	Due date of filing ATR	Date of ATR filing by Noticee No. 1
1	SEBIE/MP20/0000902/1	Mahesh Jadav	14/04/2020	15/05/2020	06/09/2021
2	SEBIE/MP20/0000755/1	Kailas Dattatraya Shinde	18/03/2020	12/05/2020	06/09/2021

3	DEACM/P/2020/00094	Desh Deepak Dubey	06/03/2020	21/05/2020	Disposed of on 07/07/2020
4	PMOPG/D/2020/0062742	Desh Deepak Dubay	27/02/2020	21/05/2020	Disposed of on 07/07/2020
5	SEBIP/MP20/0000084/1	Ahmed Guth	25/02/2020	02/12/2020	No ATR filed
6	SEBIE/MP20/0000539/1	Mukesh Kumar Gandhi	22/02/2020	02/12/2020	No ATR filed
7	SEBIP/MP20/0000025/1	Nitesh Kumar Thakur	21/01/2020	23/02/2020	28/02/2020
8	SEBIP/MP20/0000011/1	Tarun Khandelwal	08/01/2020	23/02/2020	28/02/2020

15. From the above table, I note that the said complaints were received during the period January 2020 to April 2020. I note that in 2 instances (Sr. No. 7 and 8), the delay in filing ATR is only 5 days. I also note that Noticee No.1 has not filed ATR in 2 instances (Sr. No. 5 and 6). Further, in 2 instances (Sr. No. 1 and 2), ATR has been filed in September 2021 i.e. delay of more than one year since release from judicial custody. The remaining 2 complaints were disposed of by SEBI in July 2020 as the complainant had submitted multiple duplicate complaints and the main complaints were under process.

16. In view of the above, I find that Noticee No. 1 has not filed ATR in 2 instances and delayed in filing ATR in 4 instances. I find that these 6 complaints are still pending to be resolved. In terms of the said circular, the registered intermediaries are mandatorily required to resolve the complaints, forwarded to them through SCORES, promptly within thirty days of its receipt. In view of the same, I find that Noticee No. 1 has violated SEBI Circular dated December 18, 2014 read with Regulation 21(1) of IA Regulations by not filing ATR and not resolving the complaints in a timely manner.

17. It is also alleged that the status of 18 complaints pending against Noticee No. 1, as per data from SCORES on May 19, 2020, were not displayed on its website. In this regard, the Noticee has submitted that he was in custody during March 2020 to June 2020 and post release from custody, he had updated the website. I accept the submission of the Noticee as it was not possible for him to update the website

while being in judicial custody. Thus, I find the allegation in this respect to be non-maintainable.

Allegation III – Non-possession of valid NISM Certification

18. It is alleged that Noticee No. 1 did not possess NISM Level-1 certification during the period March 5, 2018 to September 15, 2018 and did not possess NISM Level-2 certification during the period April 30, 2018 to September 29, 2018 and thereby, violated Regulation 6(b) and Regulation 7(2) read with Regulation 13(a) of IA Regulations.

19. The provisions of the IA regulations alleged to have been violated are reproduced hereunder:

Consideration of application and eligibility criteria.

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

.....

18[(b) in case the applicant is an individual, he and all persons associated with investment advice are appropriately qualified and certified as specified in regulation 7;]

Qualification and certification requirement.

(2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services-

(a) from NISM; or

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

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

Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.]

Conditions of certificate.

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

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

20. In this regard, Noticee No. 1 agreed that he was not having valid NISM certificates during the period March, 2018 to September, 2018. He stated that he has not provided any advisory services during that period except to one client, Ms. Archana Krishna, to whom he refunded the fees collected.

21. I note that the registration criteria for an investment advisor as laid down in the IA Regulations inter-alia provides that the persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services from NISM, etc. These requirements in the IA Regulations are aimed at ensuring that the interest of investors is protected and the entity granted with the registration is qualified enough to do so. As Noticee No. 1 has admitted to the allegation, I find that the Noticee was in violation of Regulation 6(b) and Regulation 7(2) read with Regulation 13(a) of IA Regulations.

Allegation IV – Alleged violation of PFUTP Regulations and Code of Conduct for IA

22. It is alleged that Noticee No. 1 has promised assured / guaranteed returns to the clients, has charged unreasonable fees in an arbitrary manner and defrauded the clients in collusion with Noticee No. 2, thereby violated Regulation 15(1), Clause 1

and 2 and 6 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations, Regulation 3(a), (b), (c), (d), 4(2)(o) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act. It is also alleged that Noticee No.2 had colluded with Noticee No. 1 and devised a scheme to defraud the investors and taken payments from clients for providing investment advise, thereby, violating Regulation 12(1) of SEBI Act read with Regulation 3(1) of IA Regulations, Regulation 3(a), (b), (c), (d) of PFUTP Regulations read with Section 12A(c) of SEBI Act. As there are multiple allegations leading to the violation of PFUTP Regulations, the issue is considered under separate sub-headings, after extracting the relevant provisions of law.

23. The provisions of the IA regulations, PFUTP Regulations and SEBI Act alleged to have been violated are reproduced hereunder:

IA Regulations.

General responsibility.

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

.....

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

THIRD SCHEDULE

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

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

CODE OF CONDUCT FOR INVESTMENT ADVISER

1.Honesty and fairness

An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.

2.Diligence

An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

6.Fair and reasonable charges

An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

2(1) (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;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(a) the economic policy of the government

(b) the economic situation of the country

(c) trends in the securities market;

(d) any other matter of a like nature

whether such comments are made in public or in private;

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

.....

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

.....

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

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

- (i) knowingly making a false or misleading statement, or*
- (ii) knowingly concealing or omitting material facts, or*
- (iii) knowingly concealing the associated risk, or*
- (iv) not taking reasonable care to ensure suitability of the securities or service to the buyer}}*

Securities and Exchange Board of India Act, 1992

12A. *No person shall directly or indirectly—*

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

24. The definition of "Investment Adviser" as given in Regulation 2(1)(m) of the IA Regulations is as follows:

"investment adviser means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;"

25. Further, Regulation 2(1)(l) of the IA Regulations states as follows:

“investment advice means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;”

(a) Charging unreasonable amount of fees from clients

26. SEBI received complaints in its SCORES platform from Ms. Archana Krishna and Mr. Avinash Mishra dated April 12, 2019 and June 01, 2018, respectively. From the documents submitted along with the said complaints including email correspondence with Noticee No. 1, it was observed that the following amount has been charged for 'Personal Client Group (PCG) Plan' from the clients:

Table -A

S. No.	Service (Tenure)	Client Name	Amount of Service (Rs.)
1	PCG Plan (6 months)	Avinash Mishra	9,00,000/-
2	PCG Plan (9 months)	Archana Krishna	2,75,000/-
3	PCG Plan (1 year)	Archana Krishna	2,75,000/-

27. Based on the above, it was alleged in the SCN that Noticee No. 1 has charged unfair and unreasonable fees in an arbitrary manner and defrauded its clients and thereby, violated Regulation 15(1) of IA Regulations, Clause 1, 2 and 6 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations, Regulation 3(a), (b), (c), (d) and 4(2)(o) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.

28. In this regard, Noticee No. 1 has submitted that the complaints by Archana Krishna and Avinash Mishra are duly resolved. Fees charged from them were for the advisory services and they have paid fees with their own will and consent and they were neither forced nor were deceived in any manner whatsoever. Moreover, Noticee No. 1 submitted that he has refunded the service amount paid by them. The fees quoted to Archana Krishna was covered under the special offer availed by her and hence, the fees quoted to her differs from the fees quoted to Avinash Mishra. The IA Regulations had not prescribed quantum of fees to be charged from clients, it specified that the fees should be fair and reasonable. Hence, according to him the fees charged for the services provided were fair and reasonable. Further, the provision related to the fees to be charged from the client came into effect from 1st April, 2021 onwards, post which Noticee No. 1 has duly followed that and has charged fees from the client within the limit specified by SEBI.

29. I note from the email dated December 01, 2018 sent by Noticee No. 1 to Archana Krishna states that there was a “special offer” extended to her. I further note that Noticee No. 1 has made payment of Rs. 4,75,000 to Archana Krishna on August 21, 2019 and September 02, 2019. As per the SCORES platform, I note that the complaint of Archana Krishna was closed on the next day i.e. September 03, 2019 with the remark *“As informed by complainant, the matter is resolved.”* I also note that Noticee No. 1 has made payment of Rs. 1,50,000 to Avinash Mishra on September 04, 2019. As per the SCORES platform, I note that the complaint of Avinash Mishra was also closed with the remark *“The complainant has informed that he has mutually settle the complaint with the IA.”* Thus, I find that both the complainants have been provided refunds by Noticee No. 1 to their satisfaction. Considering the same and that the allegation is based on merely 3 instances which is not a large enough sample to establish violation against Noticee No. 1, in respect of Code of Conduct as well as fraud, I find that the allegations in this regard are not maintainable.

(b) Promising Assured / guaranteed return to the clients

30. It is alleged in the SCN that Noticee No. 1 has indicated assured unrealistic returns and lured clients to make bigger investment and thus did not deal with his clients honestly and fairly and thereby, violated Regulation 15(1) read with Clause 1 and

2 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations, Regulation 3(a), (b), (c), (d) and 4(2)(o) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.

31. I note that the complainants, as noted above, also alleged that Noticee No. 1 was offering assured returns to its clients for availing its services and pay advisory fees for the same. The extracts/ excerpts of the email correspondence between Noticee No. 1 and complainants in this regard are as under:

Table -B

Date of email	Name of Clients	Content of email
28-03-2018	Avinash Mishra	<p><u>“Personal Client Group (PCG) Plan:-</u></p> <p><i>...The plan is offer for 6 month in which you will receive around 1.5 lac per day for a mandatory trading of 20,000 in quantity.”</i></p> <p>“Service Feature:</p> <ul style="list-style-type: none"> <i>• In this pack we will provide you 6 month service with the minimum return of 1.2-1.5 lac per day initially.”</i>
01-12-2018	Archana Krishna	<p><i>“..Our efforts are to provide you more & more profit in every trade.”</i></p> <p><u>“Personal Client Group (PCG) Plan:-</u></p> <p><i>...</i></p> <p>Service Feature:</p> <ul style="list-style-type: none"> <i>• Commodity :- Intraday, Positional Equity, BTST/STBT Services with return of 2% basis of our past performance.”</i>

32. From the above, I find that Noticee No. 1 was promising assured profits to its clients by providing declarations such as “we will provide you 6 month service with the minimum return of 1.2-1.5 lac per day initially” and “Intraday, Positional Equity, BTST/STBT Services with return of 2% basis of our past performance”. I am of the

opinion that promising assured profit in securities market amounts to misrepresentation and misleading the investors. Inducing investors to deal in securities with false promises constitutes 'fraud' under the PFUTP Regulations. I also find that the Noticee has not made any submissions to defend the allegation. I also note that making promises of "assured returns" has been held to attract the provisions of PFUTP Regulations in terms of Order of Hon'ble SAT dated December 12, 2022 in the matter of MSS Trading System Centre, which was providing unregistered portfolio management services without obtaining the certificate of registration. Extending the same analogy, I find that the Noticee has violated Regulation 3(a) and 3(d) of PFUTP Regulations read with Section 12A(c) of SEBI Act, 1992. I find that violation of Regulation 4(2)(o) and 4(2)(s) of PFUTP Regulations is not applicable in this case since the instances of violations have been found to have occurred in the year 2018 whereas the said provisions were incorporated w.e.f February 01, 2019.

33. The Noticee, being a registered IA, is aware of the fact that there cannot be "assured/guaranteed returns" in the securities market. As established above, the Noticee has made representations to its clients promising such assured returns and thus failed in its responsibility to act in fiduciary capacity towards its clients. Accordingly, I find that Noticee No. 1 has also violated Regulation 15(1), Clause 1 and 2 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations.

(c) Defrauded clients in collusion with another unregistered connected entity

34. It is alleged in the SCN that Noticee No. 1 has defrauded clients in collusion with Noticee No. 2 and thereby, violated Regulation 15(1) read with Clause 1 and 2 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations, Regulation 3(a), (b), (c), (d) and 4(2)(o) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act. It is also alleged that Noticee No.2 colluded with Noticee No. 1 and devised a scheme to defraud the investors and taken payments from clients for providing investment advise, thereby, violating Regulation 12(1) of SEBI Act read with Regulation 3(1) of IA Regulations, Regulation 3(a), (b), (c), (d) of PFUTP Regulations read with Section 12A(c) of SEBI Act.

35. I note that the allegation is based on two complaints made by R. Nadiya on November 20, 2019 and Dinesh Singh on February 03, 2020 wherein they had alleged that Noticee Nos. 1 and 2 had defrauded them by collecting payments for trading in securities market.

36. In this regard, Noticee No. 1 has submitted that R. Nadiya had taken advisory services in Equity Cash Segment by paying a fee of Rs.57,000 and he has no knowledge about the amount paid into the account of Algo System. It is also submitted that Sudeep Gangrade is a cousin brother of Noticee No. 1 and was working as an employee under Noticee No. 1. He was having some information that Sudeep Gangrade is running a part time business in the name of Algo System. However, he had no idea of him running a parallel IA business from the same premises and defrauding his clients. Noticee No. 1 got the knowledge of the same when R. Nadiya submitted a complaint on SCORES platform. He was not aware regarding his name being submitted as a nominee in the account opening form of Algo System. He submitted that the amounts transferred between Noticee Nos. 1 and 2 were related to some family matters. The reason for transfers were provided as home furnishing amount, personal loan taken by Noticee No. 2 from Noticee No. 1 and refund of amounts to R. Nadiya. He further submitted that he has not mobilized funds from clients and as a result has not done any fraudulent activity and has not violated any provisions of PFUTP Regulations.

37. Noticee No. 2 has submitted that the Algo System was started by him with an objective of offering educational services, algo software strategies and other services. With respect to the complaint of R. Nadiya, Noticee No. 2 submitted that he has not offered any guaranteed returns as the fees collected from R. Nadiya was with respect to algo strategies and not for advisory activities. Noticee No. 2 also submitted that he was forced by the SEBI Officials to make the written submissions on November 20, 2019. It is submitted that he mistakenly used the data of his employer i.e. Noticee No. 1 for offering his algo strategies to the clients of Noticee No. 1 without the knowledge and permission of Noticee No. 1. He submitted that the transactions between Algo System and Amit Gangrade were personal transactions relating to family matters and had no link with any business

activity. With respect to the complaint of Dinesh Singh, Noticee No. 2 submitted that he had provided services of algo software strategy through Algo System and it had nothing to do with investment advisory services.

38. Noticee No. 2 submitted that he had never acted as an Investment Adviser and also have not provided any kind of investment advice to any of the investor. He was just providing algo strategies for which no regulation is in place. Further, with respect to the alleged violation of PFUTP Regulations, he submitted that he has not acted in an unfair, fraudulent or dishonest manner and had not committed any fraud while “dealing in security” as contemplated under the PFUTP Regulations. He also submitted that he had never colluded with Investment Research Advisor and its proprietor and had never devised a scheme to defraud the investors as has been alleged by SEBI. The only relationship he had with Amit Gangrade was of a brother and of an employee. The allegation that the amount credited in the bank account of Algo System was towards unregistered investment advisory is factually incorrect and not tenable as the said amount includes the transaction of his other business activities viz. educational and training, property broker, transactions from friends and family members, IT Projects and others. Further, he has also made the refund to majority of the clients as directed by Amit Gangrade to ensure that no case/action gets initiated against him.

39. At the face of it, the defence of Noticee No. 2 does not instill any credibility. The strenuous attempt made by Noticee No. 2 to distance himself from Noticee No. 1 and his business activities are quite obvious. I note that it is admitted that the Noticees are brothers and Noticee No. 2 was working as an employee of Noticee No. 1. It is also admitted that Algo System was a proprietary firm of Noticee No. 2. I also note from the KYC documents of ICICI Bank Account No. 657405601184 belonging to Noticee No. 2 that he is shown as the Proprietor of Algo System and as the brother of Amit Gangrade.

40. As noted above, statements in writing were submitted by Noticee Nos. 1 and 2 to SEBI on November 20, 2019, wherein the nexus between Noticee No. 1 and Noticee No. 2 while dealing with clients was accepted. It was also admitted that Noticee Nos. 1 and 2 have dealt with R. Nadiya in a fraudulent manner and the

initial payment was taken from the client in the account of Noticee No. 1 and then the client was shifted to Noticee No. 2. It was also admitted by the Noticees that they have employed similar *modus operandi* with more than 15 clients. I note that Noticee No. 1 has in his later submissions denied that he was aware of the business run by Noticee No. 2 from the same premises. I reject this submission as an afterthought by Noticee No. 1 and rely on the written submission made on November 20, 2019 wherein the connection between the two was admitted. Noticee No. 2 had stated that Noticee No. 1 was aware of the activity carried out by him.

41. I note that the banking transactions between the Noticees also provide an indication of their business connection. I note that R. Nadiya has made payment of Rs. 57,000/- to Noticee No.1 (ICICI Bank Account No. 144101503646) and Rs. 11,07,000/- to Noticee No. 2 (ICICI Bank Account No. 657405601184). It is also noted that a total amount of Rs. 62,90,300/- was transferred to the aforesaid bank account of Amit Gangrade (ICICI Bank Account No. 144101503646) from the bank account of Algo System (ICICI Bank Account No. 657405601184) during August 30, 2019 to November 18, 2019. Some of the transactions between the said two bank accounts are depicted below:

Table -C

Account Name	Account Number	Date of Transaction	Narration	Debit Amount	Credit Amount
ALGO SYSTEM	237005500304	25-07-2019	RTGS-BARBR52019072500793579DINE-SH SINGH SO SURESH		300000.00
ALGO SYSTEM	237005500304	26-07-2019	INF/021399697701/i	899000.00	
AMIT GANGRADE	144101503646	26-07-2019	INF/021399697701/i		899000.00
ALGO SYSTEM	237005500304	05-08-2019	RTGS-BARBR52019080500477001DINE-SH SINGH SO SURESH		300000.00
ALGO SYSTEM	237005500304	05-08-2019	NE-FT-BARBQ19217896954-DINESH SINGH SO SURESH SINGH		200000.00
ALGO SYSTEM	237005500304	05-08-2019	INF/021422402071/i	500000.00	
AMIT GANGRADE	144101503646	05-08-2019	INF/021422402071/i		500000.00
ALGO SYSTEM	237005500304	09-08-2019	UPI/922148251072/Payment from Ph/9826676422@ybVBa		1.00

ALGO SYSTEM	237005500304	12-08-2019	UP 1/922244181194/Payment from Ph/9826676422@ybl/Ba		20000.00
ALGO SYSTEM	237005500304	12-08-2019	UPI/922233706243/Payment from Ph/9826676422@ybl/Ba		20000.00
ALGO SYSTEM	237005500304	20-08-2019	UPI/923216771315/Payment from Ph/9826676422@ybl/Ba		20000.00
ALGO SYSTEM	237005500304	20-08-2019	UPI/923232420731/Payment from Ph/9826676422@ybl/Ba		20000.00
ALGO SYSTEM	237005500304	22-08-2019	INF1021464232331/i	103000.00	
AMIT GANGRADE	144101503646	22-08-2019	INF1021464232331/i		103000.00
ALGO SYSTEM	237005500304	27-08-2019	RTGS-BARBR520190827009582 35-DINESH SINGH SO SURESH		900000.00
ALGO SYSTEM	237005500304	27-08-2019	INF/021474072581/i	900000.00	
AMIT GANGRADE	144101503646	27-08-2019	INF1021474072581/i		900000.00
ALGO SYSTEM	237005500304	31-08-2019	UPI/924317092551/Payment from Th/9826676422@ybl/Ba		15000.00
ALGO SYSTEM	237005500304	03-09-2019	INF/INFT/021493165961/a/i	160000.00	
AMIT GANGRADE	144101503646	03-09-2019	INF/INFT/021493165961/a/i		160000.00

42. While Noticee Nos. 1 and 2 have submitted that the banking transactions between the two were for personal reasons, I do not find it acceptable as the aforesaid banking transactions indicate that the payments received by Noticee No. 2 from the clients was immediately transferred to the bank account of Noticee No. 1. From the Table C above, it is seen that payments made by Dinesh Singh were credited into the bank account of Algo System and the same amount was subsequently transferred to the bank account of Amit Gangrade. For instance, the amount of Rs. 50,000 paid by Dinesh Singh to Algo System in two tranches on August 05, 2019 was transferred on the same day to the bank account of Amit Gangrade. Similar instances are seen to have occurred a number of times as depicted in Table C above. Thus, based on the aforesaid facts and circumstances, I find that Noticee No. 1 has colluded with Noticee No. 2 while providing investment advisory services. Such act was not fair and transparent to the clients of Noticee No.1 and thus, he

has not acted in a fiduciary capacity while dealing with his clients. Thus, I find that Noticee No. 1 has violated Regulation 15(1) read with Clause 1 and 2 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations.

43. With respect to the allegation of unregistered investment advisory provided by Noticee No. 2, he has submitted that he was providing algo strategy services, educational services and other services to the clients of Noticee No. 1 and was collecting fees from the clients in this regard. However, I find that no document has been provided by the Noticee to substantiate his claim. In fact, in his written statement dated November 20, 2019, Noticee No. 2 has admitted that he is proprietor of Algo System which is an unregistered investment advisor. It is also admitted in the written statement that such *modus operandi* and activities were done by Noticee No. 1 and Noticee No. 2 with more than 15 clients. In view of the same, I find that Noticee No. 2 was acting as an investment advisor without obtaining certificate of registration from SEBI and received fees or consideration in his bank account from the investors towards providing such services. Accordingly, I find Noticee No. 2 in violation of Regulation 12(1) of SEBI Act read with Regulation 3(1) of IA Regulations.

44. From the above, I find that Noticee Nos. 1 and 2 have employed the *modus operandi* of receiving payments in the accounts of unregistered entity and later transferring the same to the registered entity. The nature of connection between the Noticees and their transactions show that Noticee No. 1 which was a registered IA was hand in glove with Noticee No. 2 which was not registered with SEBI as an intermediary, while carrying out fraudulent dealings with the clients. Thus, I find that Noticee Nos. 1 and 2 have colluded to defraud clients and thereby, violated the provisions of PFUTP Regulations.

45. It is also observed that Noticee No. 2 had another bank account with ICICI Bank (Bank Account No. 237005500304). The amounts received in the bank accounts of Noticee No. 2 are as under:

Table - D

S. No.	ICICI Bank Account No.	Amount of credit (Rs.)	Period	Status of Account
1.	237005500304	96,76,428/-	April 04, 2019 to December 07, 2019.	Closed
2.	657405601184	56,98,824/-	September 01, 2019 to March 02, 2020.	Dormant
Total		1,53,75,252/-		

46. Since Noticee No. 2 has not provided any justification that he has received the aforesaid amounts in his bank accounts for activities other than investment advisory, the entire credit received in these accounts is being considered as fees or consideration received by Noticee No. 2 towards investment advisory services, which is liable to be refunded back to the clients.

47. In view of the above, I shall now proceed with the issuance of suitable directions and imposition of monetary penalty.

48. As regards monetary penalty, the relevant provisions read as below:

Penalty for failure to redress investors' grievances.

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

[Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided

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

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

15EB. *Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.] Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.*

49. With respect to quantification of penalty, it is found that Noticee Nos. 1 and 2 have colluded to defraud clients in violation of PFUTP Regulations. By promising assured returns to his clients, Noticee No. 1 has also violated provisions of PFUTP Regulations. Noticee No. 1, as a registered IA, has failed to abide by the provisions of Code of Conduct of IA Regulations and also failed to redress investor grievances in a timely manner. Noticee No. 1 is also found to have operated without possession of a valid NISM certification in violation of IA Regulations. I am not inclined to impose penalty on Noticee No. 1 for his failure to do risk profiling and suitability assessment for the reasons stated at Para 10 of this order. Accordingly, I find that both Noticee Nos. 1 and 2 are liable for imposition of monetary penalty under Section 15HA of SEBI Act. Further, Noticee No. 1, being a registered IA, is liable for imposition of monetary penalty under Section 15C, 15HB and/or 15EB of SEBI Act, depending on the violation being before or after March 08, 2019 i.e. the

date of incorporation of Section 15EB dealing with non-compliances by IAs specifically.

ORDER:

50. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 19 of the SEBI Act, 1992, in the interest of securing market integrity and protection of investors' interest, do hereby pass the following directions:

- a. Noticee Nos. 1 and 2 are restrained from accessing the securities market, directly or indirectly and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of three years from the date of this order;
- b. Noticee Nos. 1 and 2 shall not undertake, either directly or indirectly, investment advisory services or any activity in the securities market, for a period of three years from the date of this order;
- c. Noticee Nos. 1 and 2 are restrained for a period of three years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and from associating with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;
- d. Noticee No. 1 is directed to resolve all complaints pending against it in SEBI's SCORES portal or otherwise within a period of one month from the date of this order and furnish a compliance report to SEBI;
- e. Noticee Nos. 1 and 2 are directed to jointly refund Rs. 1,53,75,252/- (Rupees One Crore Fifty Three Lakhs Seventy Five Thousand Two Hundred and Fifty Two) received as consideration from investors/clients, in respect of the unauthorized investment advisory activities, as detailed hereinafter;

- f. Noticee Nos. 1 and 2 shall cause to issue a public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, about this order and invite claims giving details of modalities for refund, including the details of contact person such as names, addresses and contact details of person to be approached for refund, within 15 days from the date of this order;
- g. Noticee Nos. 1 and 2 shall accept refund claims/requests for a period of 3 months from the date of public notice, as directed under para 50 (f) above;
- h. Noticee Nos. 1 and 2 shall within a period of four months from the date of public notice, as directed under para 50 (f) above, carry out and complete the refund exercise;
- i. Upon expiry of 4 months from the date of public notice, any balance amount which remains with Noticee Nos. 1 and 2, due to their inability to contact the investor or otherwise, as directed in para 50 (h) above, shall be deposited in a dedicated escrow account, to be maintained by Noticee Nos. 1 and 2 and utilized only for the purpose of refund to clients. Thereafter, the amount lying in the said escrow account shall be transferred to the Investors Protection and Education Fund maintained by SEBI;
- j. The refunds to the claimants shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of refunds;
- k. Noticee Nos. 1 and 2 are hereby prohibited from selling their assets, properties including mutual funds/shares/securities held by them in demat and physical form except for the purpose of effecting refunds as directed above. Further, the banks are directed to allow debit from the bank accounts of Noticee Nos. 1 and 2 only for the purpose of making refunds to the clients;

- l. After completing the aforesaid repayments, Noticee Nos. 1 and 2 shall file a report of such completion with SEBI addressed to the Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulations and Supervision Department, SEBI, SEBI Bhavan-II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai-400051, within a period of 15 days, after expiry of four months from the date of public notice, as directed above, duly certified by an independent Chartered Accountant and the direction at para 50(k) above shall cease to operate upon filing of such report;
- m. The Noticees are hereby imposed with monetary penalty as provided hereunder:

Noticee	Violation	Provisions under which penalty imposed	Amount of Penalty (INR)
Noticee Nos. 1 and 2 (Jointly)	Regulation 3(a), (b), (c), (d) and 4(2)(o) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act	15HA of SEBI Act, 1992	5,00,000/-
Noticee No. 1	SEBI Circular dated December 18, 2014 read with Regulation 21(1) of IA Regulations	15C of SEBI Act, 1992	2,00,000/-
	Regulation 6(b) and 7(2) read with Regulation 13(a) of IA Regulations	15HB of SEBI Act, 1992	1,00,000/-
	Regulation 15(1), Clause 1 and 2 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations	15HB/15EB of SEBI Act, 1992*	2,00,000/-
	Total		10,00,000/-

** Section 15HB of SEBI Act, 1992 (for violations prior to March 08, 2019) and Section 15EB of SEBI Act, 1992 thereafter*

- n. Noticee Nos. 1 and 2 shall remit / pay the said amount of penalties within forty- five days from the date of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT > Orders > Orders of Chairman / Members > PAY NOW. In case of any difficulties in online payment of penalties, Noticee Nos. 1 and 2 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)	

- o. This order shall come into force with immediate effect.
- p. A copy of this order shall be sent to the recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents to ensure necessary compliance with above directions.

Date: April 26, 2023

Place: Mumbai

Sd/-

GEETHA G.

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA