

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulation 23 and 27 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:

Name of the Noticee	SEBI Registration No.	PAN
Capvision Investment Advisor	INA000001845	AAJFC0782A

## BACKGROUND:

1. Capvision Investment Advisor (hereinafter referred to as **"Noticee"**) 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 INA000001845, with effect from June 11, 2014. The Noticee is a partnership firm having partners namely, Ravi Prakash Mishra (hereinafter referred to as **"Partner No. 1"**) and Rekha Mishra (hereinafter referred to as **"Partner No. 2"**).
2. SEBI issued an adjudication order dated October 06, 2016, imposing a penalty of Rs. 75 lakhs on the Noticee for carrying out unregistered investment advisory business in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of IA Regulations. An appeal (Appeal No. 423 of 2016) was filed by the Noticee with the Hon'ble Securities Appellate Tribunal (hereinafter

referred to as “**Hon’ble SAT**”) challenging the said adjudication order. Hon’ble SAT upheld the SEBI adjudication order, vide its order dated November 02, 2017, wherein the following was stated:

*“15. In these circumstances, we uphold the decision of AO that the appellant committed gross violation of provisions of 2013 Regulations and that the appellant in breach of trust continued to provide investment advisory services to clients in spite of specific direction given by SEBI to stop the said business. Apart from the quantum of amount received by appellant by carrying on the investment advisory business unauthorisedly, in the facts of present case, the appellant who has made false and misleading statements in the memo of appeal regarding the quantum of amount received from the investment advisory business prior to grant of registration deserves maximum penalty. Therefore, in the facts of present case, imposition of penalty of Rs.75 lac as against the penalty of Rs. One Crore imposable under Section 15HB of SEBI Act cannot be faulted.”*

3. SEBI had imposed a penalty of Rs. 16 lakhs on the Noticee for violation of Regulation 15(9) and 21(1) of IA Regulations read with Code of Conduct as specified in Third Schedule of IA Regulations, vide another adjudication order dated November 28, 2017. The said adjudication order was also challenged by the Noticee. Hon’ble SAT, vide order dated September 25, 2019 (Appeal No. 40 of 2018) held that the Noticee had violated certain provisions of IA Regulations and conducted its business without proper care and diligence thereby resulting in losses to its clients. However, the Hon’ble SAT had reduced the penalty amount to Rs. 8 lakhs.
4. Since the Noticee failed to pay the penalties of Rs. 75 lakhs and Rs. 8 lakhs in compliance with the aforesaid adjudication orders, SEBI initiated recovery proceedings, RC 1329 of 2017 and RC 1573 of 2018 against the Noticee. SEBI also issued notice of attachment in RC 1329 of 2017 against the Noticee, ordering Banks, Depositories and Mutual Funds to freeze its bank accounts, demat accounts and mutual fund holdings, respectively. I note from the

available records that the aforesaid recovery proceedings are still pending and an amount of approximately Rs.61 lakhs has been recovered till date through the proceedings.

5. Thereafter, based on examination of several complaints received against the Noticee, SEBI initiated enquiry proceedings against the Noticee in terms of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as **“Intermediaries Regulations”**). A Designated Authority (hereinafter referred to as **“DA”**) was appointed under Regulation 24 of the Intermediaries Regulations to enquire into the following violations alleged against the Noticee:

- (a) Regulation 3(a), (b), (c), (d) and 4(1) of 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 SEBI Act, 1992 for engaging in non-genuine and deceptive activity of obtaining payments from clients to third party bank accounts.
- (b) 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, Regulation 3(a), (b), (c), (d), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992 for promising assured / guaranteed returns to the clients and failing to act in fiduciary capacity to the clients.

#### **ENQUIRY BY THE DESIGNATED AUTHORITY:**

6. The DA had issued a Show Cause Notice dated September 16, 2021 (hereinafter referred to as **“SCN”**) under Regulation 25(1) of the Intermediaries Regulations, calling upon the Noticee to show cause as to why appropriate recommendations for the alleged violations should not be made against it. The SCN was sent via Speed Post Acknowledgement Due on two of the available addresses on record viz. 1/15, Vijay Nagar, Indore – 452 010 (Madhya Pradesh) and Commerce Building, 7 Race Course Road, Indore – 452 001 (Madhya Pradesh) and returned undelivered. Thereafter, attempt to

serve the SCN via 'Hand Delivery' on October 22, 2021 also failed. Accordingly, the SCN was served upon the Noticee via "Affixture", by affixing the SCN on aforementioned addresses of the Noticee on December 21, 2021. However, no response was received from the Noticee.

7. Accordingly, in terms of Regulation 25(6) of the Intermediaries Regulations, an opportunity of personal hearing was granted to the Noticee on March 15, 2022. The hearing notice dated February 23, 2022 was served to the Noticee via "Affixture" on aforementioned addresses of the Noticee on March 03, 2022. However, the Noticee neither filed any reply/objections to the SCN nor availed the opportunity of hearing with the DA.
8. The DA, therefore, proceeded *ex-parte* on the basis of material available on record and submitted an Enquiry Report dated March 22, 2022 recommending cancellation of the certificate of registration granted to the Noticee as an IA.

#### **POST ENQUIRY PROCEEDINGS:**

9. A post-enquiry Show Cause Notice dated March 31, 2022 (hereinafter referred to as "**Post Enquiry SCN**") was issued to the Noticee enclosing a copy of the Enquiry Report submitted by the DA and calling upon him to show cause as to why actions as recommended by the DA should not be imposed against the Noticee in terms of Regulation 27 of the Intermediaries Regulations.
10. From the available records, I note that attempts made to serve the Post Enquiry SCN to the Noticee via Speed Post Acknowledgment Due at the addresses available in the records of SEBI failed as the SCN was returned undelivered. Thereafter, it was found that the Passport of Partner No. 1 and Aadhaar Card of Partner No. 2 of the Noticee showed the same address (House No. 4, Shiv Shakti Puram, Gudha, Kampoo, Lashkar, Gwalior, Madhya Pradesh - 474001). Thus, delivery was attempted on the said address, which also returned undelivered. Information regarding other addresses of the Noticee was also obtained from Depositories and Stock Exchanges. However, the delivery failed to two such addresses as well. The Post Enquiry SCN was

subsequently delivered through e-mail on April 01, 2022 to the e-mail id (ravi.mishra82217392@gmail.com), as provided in the registration form of the Noticee. However, the Noticee neither filed any reply/objections to the Post Enquiry SCN nor sought any personal hearing in the matter.

11. The matter came to be placed before the Designated Member (a Whole Time Member of SEBI) in terms of the Intermediaries Regulations, who provided an opportunity of personal hearing to the Noticee on July 28, 2022. The Noticee failed to appear for the hearing on the scheduled date. Thereafter, the SEBI (Delegation of Statutory and Financial Powers) Order, 2019 (hereinafter referred to as “**DoP**”) was amended and serial number 19A was inserted in Part A- Delegation of Regulatory Powers and Statutory Functions, Chapter- I: Delegation of Powers and Functions under the Act with effect from July 25, 2022. As per the same, issuing of directions/ orders under Section 11(1), 11(4), 11(4A), 11B(1), 11B(2), 11D or any regulations framed by SEBI (where no interim, confirmatory or revocation order is envisaged in the matter) was delegated *inter alia* to Chief General Managers (CGM) of SEBI. Thereafter, in August 2022, the instant matter got delegated to me in place of the Whole Time Member.
12. The Noticee was granted an opportunity of personal hearing on November 16, 2022. The Hearing Notice was returned undelivered from the registered address of the Noticee. The Hearing Notice was, thus, served upon the Noticee by way of newspaper publication on November 06, 2022 in The Times of India and Patrika (Indore and Gwalior Editions). No appearance was made by or on behalf of the Noticee on the scheduled date of hearing. In conformity with the principles of natural justice, two more opportunities of hearing were provided to the Noticee on November 29, 2022 and January 11, 2023. The Hearing Notices were served upon the Noticee by way of newspaper publication on November 27, 2022 and December 23, 2022 in The Times of India and Patrika (Indore and Gwalior Editions). The Hearing Notices were also delivered through email to Noticee No. 1. However, no appearance was made by or on behalf of the Noticee. I also note that the hearing notices were

delivered on October 20, 2022; November 18, 2022 and December 06, 2022 to the registered email id (ravi.mishra82217392@gmail.com) of the Noticee.

### **CONSIDERATION OF ISSUES AND FINDINGS:**

13. I note that considerable attempts have been made to serve the SCN and Post Enquiry SCN to the Noticee and hearing opportunities have also been granted to the Noticee. Despite the same, no response or appearance has been made by or on behalf of the Noticee. Under the circumstances, I am of the view that sufficient opportunity has been provided to the Noticee to ensure principles of natural justice and the Noticee has failed to avail the same. I, therefore, find that even though the Noticee is a registered intermediary, it has remained *ex parte* during the entire proceedings, which in itself creates an adverse inference against the Noticee. Nonetheless, I find it relevant that I should be guided in the instant matter based on the material available on record.
14. Before proceeding to deal with the issues, I note that the period for which violations were found against the Noticee in the aforesaid adjudication orders was the year 2014-15 while the allegations alleged in the instant proceedings pertain to a later period. Thus, I find that there is no overlap with respect to the period or the violations in the adjudication orders and the instant proceedings.
15. 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 separately in the following paragraphs.

### **Allegation I – Engaging in non-genuine and deceptive activity in violation of provisions of PFUTP Regulations**

16. It is alleged that the Noticee engaged in non-genuine and deceptive activity by receiving payments from clients in third-party accounts and thereby, violated Regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992.

17. The provisions of the PFUTP regulations alleged to have been violated are reproduced hereunder:

***“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 practice***

*(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.”*

18. The provisions of SEBI Act, 1992 alleged to have been violated read as under:

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

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

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

*recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”*

19. It is observed that SEBI received a complaint from Mr. Rathindranath Mudi on February 03, 2020, wherein, it was alleged that the Noticee had promised huge returns to him. It was also alleged that no invoice or contract note was provided by the Noticee with respect to his payment of Rs. 1,70,000 into ICICI Bank Account No. 094505501720 (hereinafter referred to as “**Bank Account No. 1**”) provided by the Noticee. On examination of Know Your Client (‘**KYC**’), Account Opening Form (‘**AOF**’) and bank account statement of Bank Account No. 1 as received from ICICI Bank Limited, following observations are made:
- (a) The account was opened in May, 2019 in the name of M/s Capvision, Proprietor, Pushpendra Chourasiya (hereinafter referred to as “**P. Chourasiya**”). The address mentioned on the documents was *11/15, Scheme N 54, Vijay Nagar, Indore* and name of Ravi Mishra was appearing as the witness on AOF.
  - (b) Credits aggregating to Rs. 2.54 crore were received in the bank account during May, 2019 to April, 2020 and the balance amount available in the account as on April 30, 2020 was Rs. 60,052.
  - (c) Debits in the said account have been mainly ATM withdrawals, cash paid towards Self and Internet fund transfers to various third parties. Several NEFT fund transfers were made to Lakhan Prajapat, who was an employee of the Noticee.
  - (d) SEBI had received several complaints against the Noticee and it was observed that some of the fees paid by those complainants, viz., Mr. Anubhav Kashyap, Mr. Gaurav Namboori, Mr. Rathindranath Mudi and Mr. Muzammil are credited to Bank Account No. 1.
20. I note that SEBI also received a complaint from Mr. Anubhav Kashyap on December 02, 2019, wherein it was, *inter-alia*, alleged that the Noticee had promised assured profit of about 10% on invested capital. However, he incurred losses by executing trades on the basis of the calls made by the Noticee. It was observed that the complainant had made payments into two bank accounts, viz. Bank Account No. 1 and ICICI Bank Account no.



144105500597 (hereinafter referred to as “**Bank Account No. 2**”). From the KYC, AOF and bank account statements of Bank Account No. 2 as provided by ICICI Bank, following observations are made:

- (a) The account was opened in November, 2015 in the name of M/s Capvision Investment Advisor Ltd. (hereinafter referred to as “**CIAL**”). CIAL was incorporated in September, 2015 and its registered address was mentioned as - *Flat No. 305 AP Apartment, 29/1 Race Course Road, Indore – 452001* and email ID provided for record was ravi.mishra82217392@gmail.com.
- (b) As per the Memorandum of Association (**‘MoA’**), the main objects of CIAL is “*to carry on the business of investment advisor and to invest, buy, sell, transfer...shares, stocks, commodities, etc.*” Vide Special Resolution at the Extraordinary General Meeting of the Members held on July 08, 2019, the MoA was amended to “*To act as consultants, management consultants, and provide advice, services, consultancy in various fields and to render consultancy and advisory services in the field of management, secretarial, legal, ... taxation, etc.*”
- (c) As per the Board Resolution dated October 15, 2015, the Directors of CIAL were Partner No. 1 (Ravi Prakash Mishra), Partner No. 2 (Rekha Mishra) and Saharsh Mishra. It was also observed that the name of the company was changed from Capvision Investment Advisor Ltd. to Unbribeable Consultants India Ltd. w.e.f. July 25, 2019. As per the records available with the Ministry of Corporate Affairs (**‘MCA’**), the current directors of CIAL are P. Chourasiya (since June 06, 2019), Govind Singh Thakur (since June 06, 2019) and Saharsh Mishra (since September 22, 2015). The Company status is Active as per the MCA records.
- (d) As per the Board Resolution, Partner No. 1 is authorized (singly) to operate/activate the account. The type of industry as per the AOF is advisory services, share market.
- (e) Credits aggregating to approximately Rs.1.8 crore, were received in the account from inception till July 22, 2019 i.e. the date of closure of Bank Account No. 2. Debits in the said accounts are mainly ATM

withdrawals and several NEFT fund transfers were made to Lakhan Prajapat, an employee of the Noticee.

- (f) Some of the fees paid to the Noticee by clients, namely, Mr. Anubhav Kashyap and Mr. Sudhakaran T are observed to have been credited to Bank Account No. 2.

21. It is also observed that CIAL was also having a bank account with HDFC Bank Ltd. having Account No. 50200017709047 (hereinafter referred to as “**Bank Account No. 3**”). The said account was opened in April, 2016 in the name of CIAL. Credits aggregating to approximately Rs.72 lakhs were received in Bank Account No. 3. The said account was closed in September, 2018.

22. I also note that SEBI received multiple complaints against the Noticee on the SEBI Complaint Redressal System (“**SCORES**”) platform, wherein, it was observed that the clients had made payments to the Noticee through E-billing Solution (“**EBS**”) payment gateway. As per the information obtained from EBS payment gateway, the account with EBS was opened by Partner No. 1 (Ravi Prakash Mishra) for the Noticee in December, 2014. The underlying bank accounts linked with EBS payment gateway were as follows:

- (a) Axis Bank Account No. 914020045744750 – From December 2014 to July 2018.
- (b) Bandhan Bank Account No. 10180003278847 (hereinafter referred to as “**Bank Account No. 4**”) - From July 2018 to July 2019.
- (c) AU Small Finance Bank Account No. 1921231323713523 (hereinafter referred to as “**Bank Account No. 5**”) – From July 2019 onwards.

23. From the KYC, AOF and bank account statements of Bank Account No. 4 as provided by Bandhan Bank, following observations are made:

- (a) The account was opened in June 2018 in the name of Capvision Investment Advisor, Proprietor, Pushpendra Chourasiya. The address provided was 1/15, Vijay Nagar, Indore and e-mail id was pushpendrachoursiya@gmail.com. As per the Trade Licence, the line of business is private.

- (b) Credits aggregating to Rs. 2.14 crore were received in the account during June, 2018 to July, 2019. The credits in the account were mainly through EBS payment gateway and the debits were mainly in the form of ATM withdrawals. Several NEFT fund transfers amounting to Rs. 4.19 lakhs were made to Partner No. 1. Further, NEFT fund transfers amounting to Rs. 7.5 lakhs were made to Lakhan Prajapat. Rs. 1.5 lakhs were also transferred to Ashok Lad, an employee of the Noticee.
- (c) The account was closed on September 20, 2019.

24. From the KYC, AOF and bank account statements of Bank Account No. 5 as provided by AU Small Finance Bank, following observations are made:

- (a) The account was opened in June 2019 in the name of Capvision Investment Advisor, Proprietor, Pushpendra Chourasiya. The address provided was 1/15, Vijay Nagar, Indore and email id was pushpendrachoursiya@gmail.com. As per the KYC, the nature of industry is Advisory and as per the Trade license, the line of business is private.
- (b) Credits aggregating to approximately Rs. 1.31 crore were received in the account during July, 2019 and April, 2020. The credits are mainly through EBS payment gateway and the debits are mainly in the form of ATM withdrawals and third party transfers. The account was active as on April 30, 2020 having balance of Rs. 528.

25. It was also observed that P. Chourasiya had operated another Bank Account No. 10190006725256 with Bandhan Bank (hereinafter referred to as “**Bank Account No. 6**”). From the KYC, AOF and bank account statements of Bank Account No. 6 as provided by Bandhan Bank, following observations are made:

- (a) The account was opened in January, 2020 in the name of Capvision, Proprietor, Pushpendra Chourasiya. The address provided was 11/15, Scheme no. 54, Vijay Nagar, Indore and email id was rpm7382@yahoo.com. As per the Trade licence, the line of business is software developers and services.

- (b) Credits aggregating to Rs. 15.47 lakhs were received in the account. All the credits were through payment gateway Razorpay. The account was active as on April 30, 2020 having balance of Rs. 2,72,233.

**Connection between the registered and unregistered entities:**

26. From the documents available on record, I find that the registered IA i.e. the Noticee and its active partner i.e Partner No. 1 are connected with other unregistered entities, in whose bank accounts amounts were received from clients in lieu of IA services, as detailed below:

**Table No. 1**

<b>Capvision Proprietor - Pushpendra Chourasiya</b>	<b>Capvision Investment Advisor Proprietor - Pushpendra Chourasiya</b>	<b>Capvision Investment Advisor Ltd (CIAL)</b>
<p>1. Partner No. 1 is the witness on the bank AOF for this entity.</p> <p>2. Clients of the Noticee have deposited service fee/charges to the entity's bank account.</p> <p>3. Fund transfers to employee of the Noticee.</p>	<p>1. Payment by clients of the Noticee through EBS credited to the entity's bank account.</p> <p>2. Funds transfer from entity to Partner No. 1 and employees of the Noticee.</p>	<p>1. Past Directors were the two Partners of the Noticee. Present Directors include P. Chourasiya.</p> <p>2. Partner No. 1 is authorized (singly) to operate/activate the entity's bank account.</p> <p>3. Clients of the Noticee have deposited service fee/charges to the entity's bank account.</p> <p>4. Funds transfer to employee of the Noticee.</p>

27. From several complaints received in SCORES against the Noticee, it is observed that the clients of the Noticee have made payments to the bank accounts of aforementioned unregistered entities as detailed below:

**Table No. 2**

Sl. No.	Name of client	Amount (in Rs.) deposited in the bank account of	
		Capvision Investment Advisor Ltd	Capvision Proprietor – P. Chourasiya
1.	Gaurav Namboori	-	1,75,000
2.	Rathindranath Mudi	-	1,70,850
3.	Samir Rajeshbhai	-	1,45,220
4.	Anubhav Kashyap	45,025	55,000
5.	Ashish Kumar	-	13,000
6.	Md. Muzammil Khan	-	10,000
7.	Amol Bhairu Mote	68,000	-
8.	Sambhaji Shrirang	49,500	-
9.	Janaksingh Mohansingh	33,000	-
10.	Sudhakaran T	20,000	-

28. A summary of bank account details and amount received by the unregistered entities related to the Noticee and Partner No. 1 are tabulated below:

**Table No. 3**

Particulars	Capvision, Proprietor - P. Chourasiya	Capvision Investment Advisor, Proprietor - P. Chourasiya	Capvision Investment Advisor Ltd
PAN	DCFPP0828H	DCFPP0828H	AAGCC2325P
Bank Accounts	Bank Account Nos. 1 and 6	Bank Account Nos. 4 and 5	Bank Account Nos. 2 and 3
Signatories / Authorized person	P. Chourasiya	P. Chourasiya	Partner No. 1
Period	May 2019 to April 2020	June 2018 to April 2020	November 2015 to July 2019
Total Credits received	Rs.2.69 crore	Rs.3.45 crore	Rs.2.52 crore
Account status (as on 30.4.2020)	Both accounts Active	Bank Account No. 4 - Closed Bank Account No. 5 - Active	Both accounts Closed
Account Balance (as on 30.4.2020)	Bank Account No. 1 – Rs. 60,052 Bank Account No. 6 – Rs. 2,72,233	Bank Account No. 5 – Rs. 528	Nil

29. From the aforesaid facts and circumstances, I find that Partner No. 1 had floated a company in the name of Capvision Investment Advisor Ltd. i.e. CIAL, to undertake investment advisory activities and receive payments from clients without informing SEBI or seeking registration as an IA. I also find that subsequent to the freeze of bank accounts of the Noticee in 2017, as a result of recovery proceedings of SEBI, Partner No. 1 who was the active partner of the Noticee, created two proprietorship firms in collusion with P. Chourasiya who was named as the proprietor of these firms. I find that such acts were undertaken after the Noticee got registered with SEBI as an IA while the penalty amount imposed vide SEBI order dated October 06, 2016 remained unpaid. I, therefore, find that Partner No. 1 has clandestinely floated entities with names similar to the registered firm, showing other individuals as the proprietor or directors of such unregistered entities so as to open/operate fresh bank accounts and continue with his IA activity.
30. I find that the payments received from clients of the Noticee were routed to the bank accounts of CIAL and the two proprietorship firms opened in the name of P. Chourasiya. The name of the two proprietorship firms and CIAL were kept similar as the Noticee (i.e. "Capvision") in order to avoid bringing any changes to the notice of its clients and thus, with an intention to receive payments from the clients in the bank accounts of CIAL and the two proprietorship firms which were not registered as IA. From the complaints of clients available on record, I note that the clients were always under the impression that they are taking services of the Noticee which was a SEBI registered IA. Such payments were received directly as well as through payment gateways, EBS and Razor Pay. The linkage between the Noticee and Partner No. 1 with these proprietorship firms and CIAL is evident from the observations made at Table No. 1 above.
31. The said facts and circumstances clearly establish that Partner No. 1 continued to undertake IA activity and receive payments from clients while evading the payment of penalty amounts to SEBI. While I note that the Noticee has not been debarred from undertaking IA activity, such acts, undertaken with the intention to evade the payment of penalty amounts by diverting the

consideration received from clients in respect of IA activity to other bank accounts, raise questions on the conduct of the Noticee as a registered IA. However, in my view, these actions do not provide any evidence of 'fraud' or 'fraudulent trades / transactions' in securities market as contemplated under PFUTP Regulations. On the other hand, the acts of Partner No. 1 in collusion with P. Chourasiya and others indicate that the registration obtained in the name of the Noticee was in fact being used for the unregistered IA activities.

**Allegation II – Promising assured / guaranteed returns to the clients and failing to act in fiduciary capacity to the clients**

32. It is alleged in the SCN that the Noticee promised assured / guaranteed returns to its clients and failed to act in fiduciary capacity to the clients, thereby, violating 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, Regulation 3(a), (b), (c), (d), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992.
33. The provisions of IA Regulations alleged to have been violated are reproduced hereunder:

*“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.*

***Clause 1 and 2 of Code of Conduct***

***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.*

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

34. The provisions of PFUTP Regulations and SEBI Act, 1992 have already been stated in earlier parts of this order. The provisions which have not been stated are reproduced hereunder:

***“4. Prohibition of manipulative, fraudulent and unfair trade practices***

*(1) ....*

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

*....*

*(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;*

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

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

*(i) knowingly making a false or misleading statement, or*

*(ii) knowingly concealing or omitting material facts, or*

*(iii) knowingly concealing the associated risk, or*

*(iv) not taking reasonable care to ensure suitability of the securities or service to the buyer;”*

35. I note that SEBI had received several complaints on SCORES against the Noticee alleging that it was offering assured and unrealistic profits to its clients who had availed its services and paid advisory fees for the same. The extracts/ excerpts of some of the complaints in this regard are as under:

- (a) Complaint **SEBIE/MP17/0061162/1** from Vinod Nair Rajagopal, wherein, in email dated August 21, 2017 to him, the Noticee has stated the following:

<i>SERVICES</i>	<i>CHARGE</i>	<i>PROFIT</i>
<i>Stock cash</i>	<i>Rs.18900 (+18% GST)</i>	<i>Rs.75,000 approximately</i>

Further, in email dated August 30, 2017, the Noticee has stated the following:



<i>SERVICES</i>	<i>CHARGE</i>	<i>PROFIT</i>
<i>Option Pack</i>	<i>Rs.45000 (+18% GST)</i>	<i>Rs.4,50,000 approximately</i>

- (b) Complaint **SEBIE/MP18/0000993/1** from Abhishek Kumar, wherein, in email dated November 18, 2017 to him, the Noticee has stated the following:

<i>SERVICES</i>	<i>CHARGES</i>	<i>PROFIT</i>
<i>Option Plan</i>	<i>Rs. 65,000</i>	<i>Rs. 2,60,000</i>

- (c) Complaint **SEBIE/MP18/0001699/1** from Mr. Prashant Kulkarni wherein in attachment provided to him, the Noticee has stated the following:

<i>Services:</i>	<i>APP Services</i>
<i>Service Amount:</i>	<i>Rs. 1,25,000</i>
<i>Service Duration:</i>	<i>3 months</i>
<i>Net Profit:</i>	<i>Rs. 6,25,000</i>
<i>Investment:</i>	<i>Rs. 45,000</i>

- (d) Complaint **SEBIE/MP20/0000927/1** from Hemender Singh Chauhan provided payment proof for payments made to Ravi Prakash Mishra and Capvision Investment Advisor and stated the following:

*“A person named Sonu, Phone number 8889249618, called and said he is calling from Capvision Investment Advisor Indore. We provide intraday services of Rs. 25000 for 3 months & will give return of Rs. 3000 to Rs. 4000 per day. After payment of Rs. 10000, he said they have another service of Rs. 1.5 lakhs in which they give return of Rs. 6.5 lakhs with capital of Rs. 50000.”*

- (e) Complaint **SEBIE/MP20/0000864/1** from Eshwar Namdeo Gunjal stated the following:

*“Executive from Capvision SEBI REG NO INA000001845 daily calling me and forcing me for trade in index option and promised me huge profit but incurred huge loss of Rs.37000 and I have paid Rs.5000 to*

said company for recovering my loss but again made loss. I requested him to send SMS for trade but he is giving calls though I refused. Company has not done my Risk profiling but still demanding another fee for my loss recovery.”

- (f) Complaint **SEBIE/MP19/0000987/1** from Sambhaji Shrirang Gadade stated the following:

*“I, Sambhaji Gadade, 45yrs old Farmer, took basic service of Rs.7000 for 6 months from Capvision through Kajal and Jatil Sharma on January 07, 2019. Then they offered premium service of Rs.40000 for 3 months but I denied because I had no money. Then they told me to pay only Rs.6000 and remaining amount in instalments of Rs.6000 per week after making profit. But there is no profit since my premium service is activated after paying 3 instalments of Rs.6000 they tortured and blackmailed me by saying if you cannot pay remaining amount immediately your service will stopped. They also said frequently you will get huge profits in future, so I sold my only one cow and paid I paid Rs 48600.”*

- (g) Complaint **SEBIE/MP19/0002585/1** from Ashok Manohar Kavade stated the following:

*“I, Ashok Manohar Kavade, want to complain that executive of Capvision Investment Advisor named Viraj Sharma called me and asked me to invest in the share market and when I started working with them, they told me to subscribe for the service. I paid Rs.10000 and later told for subscribing to premium service of Rs.60000 and after some time, the amount I have invested in market I lost everything and then also these people keep on asking for money. I have given the amount because they told me that they will give me the profit upto Rs.30000-40000 and for premium service Rs. 3-4 lakhs every month but they only given me the losses.”*

- (h) Complaint **SEBIE/MP19/0003107/1** from Mohammed Muzammil Khan stated the following:

*“I registered for Rs.10,000 plan but Capvision misled me telling that Rs.10,000 plan is risky and there is high chance of losing money. They asked me to register for Rs.4,05,000. I did not agree to it. Then a person named Krishna told me that I have to pay only Rs.75,000 and the remaining amount will have to be paid only after earning Rs.8,00,000 to Rs.13,00,000 from the stock market. Then I was threatened telling that if I do not pay Rs 50,000, they will not provide service. I paid Rs 50,000. This continued. They extracted Rs 2,50,000 in total from me. I had to take a loan.”*

- (i) Complaint **SEBIE/MP20/0000023/1** from Anubhav Kashyap stated the following:

*“Mr. Prakash from Capvision has contacted me for trading, first of all he gave me package of Rs.10000 and promised me to give assured profit of about 10 percent on my capital. In that service he give me profit of Rs.10000 and ask me to first pay the fees then he will continue the service. After 2 days, he give me call back and ask me to come in special services that are not mentioned in site. They illustrated me about the service and ask me to pay Rs.70000 in instalments as and when I will get the profit.”*

- (j) Complaint **SEBIE/MP20/0000132/1** from Naresh Kumar stated the following:

*“CapVision has charged Rs.2,09,835 against 5 different services (within 2 months) and caused a capital loss of Rs.1,50,000/- approx. The company has promised guaranteed return and charged arbitrary fee. SEBI norms were not followed and offered the service without Risk Profile and Investment Suitability Report.”*

- (k) Complaint **SEBIE/MP20/0000306/1** from Rathindranath Mudi stated the following:

*“Capvision Investment Advisory took my money amount of Rs.1,70,850/- by making false promises. They called me around 1st half of November 2019 and offered me their stock market advisory*

*service. Also they assured me that they are SEBI registered entity and give huge returns in stock market. I checked SEBI's website and it was true. Their SEBI registration number is INA000001845. So, I took their service."*

- (I) Complaint **SEBIE/MP20/0000305/1** from Harshal Darak stated the following:

*"Capvision has taken Rs.42000 from me saying will provide good calls and earn you profit of Rs. 3.5 lakh. Instead of that they are making fool of me. Also with their calls I had loss of 1 lakh rupees. Also they say lot of things about budget session will make you profit of Rs.60000 in 3 days for Rs.2000 extra service charge. Nothing is provided."*

36. I note that Regulation 3(a) of PFUTP Regulations prohibits any person from buying, selling or otherwise dealing in securities in a fraudulent manner and Regulation 3(d) of PFUTP Regulations prohibits a person from engaging in any course of business which operates as fraud or deceit upon any person in connection with any dealing in securities. I find from some of the complaints extracted at Para 35 above, that the Noticee provided assured returns/profits to its clients (e.g. *assured profit of about 10% on capital; return of Rs. 3000 to Rs. 4000 per day; profit of Rs.60000 in 3 days for Rs.2000 extra service charge*) as well as disproportionately huge amounts of profits to the investments which is more than ten times of the investment etc. In my view, promising assured profit in securities market amounts to misrepresentation and misleading the investors. Such reckless conduct intended to induce investors to deal in securities constitutes 'fraud' under the PFUTP Regulations. I also find that the Noticee being a registered intermediary has failed to appear in the proceeding and defend the allegation of violation of PFUTP Regulations. I also note that making promises of "assured returns" has been held to attract the said provisions 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), 3(d), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(c) of SEBI Act, 1992.

37. The Noticee, being a registered IA, is aware of the fact that, in the securities market, there cannot be “assured/guaranteed returns”. It is reiterated that 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 the Noticee has 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.

### **CONCLUSION:**

38. I note that parallel proceedings under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act, 1992 had been initiated against the Noticee and 6 others in the matter, which was disposed of earlier vide my Order dated February 28, 2023. The directions included restraining the Noticee from accessing the securities market and prohibiting from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of three years from the date of the order. The Noticee was also directed to refund Rs. 8.66 crore to the clients and imposed a penalty of Rs.12 lakh under Section 15HB and 15EB of the SEBI Act, 1992.
39. On an evaluation of the entire facts and circumstances, I find that the following events have unfolded. Pursuant to the recovery proceedings initiated by SEBI in 2017 and 2018, to recover the penalty amounts of Rs. 75 lakhs and Rs. 8 lakhs imposed on the Noticee in two adjudication orders, the bank accounts of the Noticee were frozen. Thereafter, Partner No. 1 (Ravi Prakash Mishra), who was the main proprietor of the Noticee engaged one P. Chourasiya to open new bank accounts for receipt of money from the clients of his investment advisory business. These bank accounts were opened in the name of P. Chourasiya as the proprietor of certain entities with names closely similar to that of the Noticee, which were called as Capvision and Capvision Investment Advisor. Payments from clients were also received in another

company called Capvision Investment Advisor Ltd. (CIAL) whose original directors included Partner No. 1 and Partner No. 2 who were later replaced in 2019 with P. Chourasiya and others. This is a fraud, in a larger sense played on the system as a whole, whereby in order to bypass the freezing directions, Partner No. 1 has connived with other individuals to continue with his IA business. I also find that the Noticee has not acted in the best interests of its clients and violated the Code of Conduct and PFUTP Regulations by promising assured profits to its clients. I also find that, in the past, two adjudication orders were passed against the Noticee levying penalties which were not paid. I find that in the instant matter, the Noticee along with Partner No. 1 (Ravi Prakash Mishra) has acted in a *mala fide* manner to defeat the purposes of the enforcement actions initiated in respect of the violations committed as an IA. Moreover, I find that a registered intermediary such as the Noticee, who does not respond to the communication sent by the regulator or fails to appear before the regulator, is not worthy of holding the authorization issued to it. Thus, considering the gravity of the breaches of statutory provisions committed by the Noticee, the conduct of the Noticee is not in the interest of the securities market. I am, therefore, of the view that cancellation of certificate of registration, as recommended by DA, would be commensurate to the violations established.

**ORDER:**

40. In view of the foregoing, in exercise of the powers conferred upon me in terms of Section 12(3) of SEBI Act, 1992 and Section 19 of the SEBI Act read with Regulation 23 and 27 of SEBI (Intermediaries) Regulations, 2008 and Regulation 28 of SEBI (Investment Advisers) Regulations, 2013, and in the interest of investors in the securities market, I do hereby cancel the certificate of registration granted to Capvision Investment Advisor having SEBI Registration number - INA000001845.
41. This order shall come into force with immediate effect.

42. A copy of this order shall be sent to the Noticee and BSE Administration and Supervision Ltd.

**Date: March 27, 2023**

**Place: Mumbai**

**Sd/-**

**GEETHA G.**

**CHIEF GENERAL MANAGER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**